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Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

IN *RE* MARIE M. MCMAHON

ON APPLICATION FOR EXTRAORDINARY WRITS WEST VIRGINIA SUPREME COURT OF APPEALS ET AL

PETITION FOR WRITS OF MANDAMUS/PROHIBITION, OR BOTH IN THE ALTERNATIVE

MARIE M. MCMAHON
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156 pp

QUESTIONS

1. Where does any litigant go to seek constitutional justice when State Supreme Courts retain (and appoint) trial judges who violate the Supremacy Clause and required oaths of office as required by the United States Constitution, Article Six?
2. Does THIS COURT have a duty-owed responsibility to cause investigation/prosecution of at least sixteen (16) trial courts (state and federal) in two (2) states (Virginia and west Virginia) in two (2) cases, when misrepresentations and appearances show W Va Sup Ct is trying to "cover-up"?
3. Does seeking "numerous times", to different courts, litigant's fundamental guaranteed civil rights, per United States Constitution and laws made in pursuance therewith, give "Just cause" (Rule 35) to order such litigant to submit to mental examination?
4. Does Mr. Justice Stevens' dicta (as referenced in Daniels v. Williams, 106 S Ct 678 (1986) stating. . ."The violation is complete as soon as the prohibited action is taken". . .re Fourteenth Amendment Due Process and 1983 remedies) apply to courts, as well as all others?
5. Does separation of powers (executive, legislative and judicial) allow court, or any judicial officer, to ignore statutes as written, substituting their own "laws"; in effect, legislate to suit themselves, depending on WHO it is? Is such also violation of equal protection laws?
6. Can any court, trial, appeals or supreme, go outside the bounds of the Constitution of the United States and laws made in pursuance therewith, and write valid orders that demand compliance with such order?
7. Can West Virginia Supreme Court of Appeals (or any supreme court) restore jurisdiction to a trial court who has usurped his/her power to willfully, recklessly and maliciously violate fundamental civil rights, the supremacy clause and individual oath of office?

8. Does Rule 17(c) of Rules of Civil Procedure give authority to order mental examinations?

PARTIES

1. West Virginia Supreme Court of Appeals.
2. Ch. J. Margaret Workman, administratively.
3. John M. Hamilton, Sp. Cir Ct (Morgan County) Retired Judge, 202 Fairfax St., Berkeley Springs, WV 25411.
4. Paul Weiss, Attorney, Martin & Seibert, P. O. Box 1286, Martinsburg, WV 25401.

PARTIES BELOW

1. John P. Adams, Prosecutor, demoted self to Assistant, 204 North Washington St., Berkeley Springs, WV 25411.
2. Donald C. Hott, Ret'd Cir Ct J., Morgan County, WV.
3. Glen Stotler, Morgan County Commissioner, 202 Fairfax St., Berkeley Springs, WV 25411.
4. Donald Sharp, Magistrate, Morgan County, WV (now former).
5. Martin & Seibert Law Firm, P. O. Box 1286, Martinsburg, WV 25401.
6. Susan Snowden, Attorney, Martin & Seibert, P. O. Box 1286, Martinsburg, WV 25401.
7. Daniel T. Booth, Attorney, Martin & Seibert, P. O .Box 1286, Martinsburg, WV 25401.
8. Paul Weiss, Attorney, Martin & Seibert, P. O. Box 1286, Martinsburg, WV 25401.
9. Morgan County Fire Board (MCFB), Berkeley Springs, WV 25411.
10. Howard Trittipoe, Secretary/Treasurer, MCFB, Berkeley Springs, WV 25411.

NOTICE: L. G. Lewin, Steptoe & Johnson, P. O. Box 2629, Martinsburg, WV 25401, Tel: (304) 263-6991.
Counsel for the State/County Officials DID NOT (in Case 95-C-37) Motion for mental examination of this Petitioner; Petitioner submits he is doing as little as possible in relation

thereto. Only the [bank]* possibly and Martin & Seibert, attorneys, are doing this particular harassment, together with the courts? WHY?

*Bank is F & M where Petitioner formally was a customer. Clarence E. Martin, III (Martin & Seibert) is on Bank Board in Martinsburg, WV. . . same as original Circuit Court Judge Snead's

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I. JURISDICTION

On March 20, 1997 (A Pg 10) West Virginia Supreme Court voted in toto to retain Respondent Hamilton, Circuit Court Retired Judge in Case No. 95-C-37, Morgan County Circuit Court. Court is seeking guardian ad litem fraudulently. Claim is for Petitioner's welfare; truth is for Respondent's welfare because Petitioner can document her allegations ninety-eight percent (98%); criminal actions also apply and was pointed out to West Virginia Supreme Court on September 25, 1996, when Petitioner appeared before said Court; with above retention of R. Hamilton, W Va Sup. Ct. confirmed they had, in fact, denied NOT GRANTED Petitioner's Petition for Writ of Prohibition to prohibit any mental examination for lack of "just cause" under Rule 35 RCP, on December 13, 1996. See A Pg 10. Decision ambiguous, fraudulent and deceitful suppression of material/ relevant facts.

THIS COURT has jurisdiction to review the judgments in question under 28 USC 1651a, and 2106, S Ct. Rule 20; Fed Prac and Proc. 2862, 60(b)(4). And since Petitioner has been denied jury decision for over ten (10) years by sixteen (16) trial courts; taking property without due process of law after usurpation of power. Further, THIS COURT should exercise its power to stop not only the destruction against constitutions by the above, but also correct lower courts from claiming/pretending and acting as if refusal by THIS COURT (AND STATE SUPREME COURTS) TO GRANT HEARINGS ON APPEALS (THAT HAVE ALREADY HAD THESE SAME COURTS' DECISIONS IN THE PARTICULAR ISSUES INVOLVED) IS TANTAMOUNT TO REVERSAL OF SAID COURTS' PREVIOUS CONSTITUTIONAL WRITTEN DECISIONS. Such is being done over and over, causing injury after injury to litigants. See A Pg 18

herein. It is Petitioner's position that THIS COURT is letting stand their previous decisions and **not reversing themself. Same should be true with state supreme courts. (NOT SO, pled and acted opponents**. Such denials mean "we won!") No lawyer/court can be that dumb. It is blatant, reckless, disgraceful and destruction over and over of the following published points of law:

II. CONSTITUTIONAL AND STATUTORY PROVISIONS

1. First Amendment, United States Constitution

   Courts shall make no law ... abridging the rights of the people ... to petition the Government for redress of grievances.

2. Amendment Five:

   No person shall . . . be deprived of life, liberty, or property, without due process of law . . .

3. Amendment Seven:

   In suits of common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury **shall be preserved** . . . : (pert. Pt.)

4. Fourteenth Amendment:

   All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. **No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any**

person or life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

5. Article Six, Cl. 2, and 3. (pert. Pt.):

This constitution, and the laws of the United States which shall be made in pursuance thereof . . .shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The . . . Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation to support this Constitution.

6. Article Three, Sec. 1 (pert. Pt.):

. . . The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, . . .

7. Article Two, Sec. 4:

The President, Vice President and all civil Officers of the United States shall be removed from office on impeachment for, and convictions of, bribery, or other high crimes and misdemeanors.

8. 28 USC, Sec. 1654: Appearance personally or by Counsel.

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

9. 42 USC, Sec. 1983/Civil Action - for deprivation of rights.

Every person who, under color of any statute . . . subjects, or causes to be subjected, any citizens of the United States . . . within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws **shall be liable to the party injured in an action at law . . . or other proper proceeding for redress . . .**

Conspiracy to interfere with civil rights. 1985 (2) Obstructing justice; intimidating party, witness, . . .

If two or more persons in any State . . . conspire to deter, by force, intimidation, or threat, any party or witness . . . from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness **in his person or property on account of his having so attended or testified, or to influence the verdict** . . . or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State . . . or to injure him or his property for lawfully enforcing, or attempting to enforce the right of any person, to the equal protection of the

laws.

10. Title 18, Ch. 13, Sec. 241/242 also applies criminally.

11. Federal Practice and Procedures, Ch. 8. 2862.
Rule 60(b)(4) authorizes relief from void judgments. Necessarily a motion under this part of the rule differs markedly from motions under the other clauses of Rule 60(b). There is no question of discretion on the part of the court when a motion is under Rule 60(b)(4). Nor is there any requirement, as there usually is when default judgments are attacked under Rule 60(b), that the moving party show that he has a meritorious defense. Either a judgment is void, or it is valid. Determining which it is may well present a difficult question, but when that question is resolved, the court must act accordingly.
By the same token, there is no time limit on an attack on a judgment as void. The one-year limit applicable to some Rule 60(b) motions is expressly inapplicable, and even the requirement that the motion be made within a "reasonable time" which seems literally to apply to motions under Rule 60(b)(4), cannot be enforced with regard to this class of motion. A void judgment cannot acquire validity because of laches on the part of the debtor. State law may have some relevance in determining whether a judgment is void, particularly if it goes beyond federal law and would strike down a judgment that federal law would permit. **On the whole, however, the limits on the power of courts to enter valid judgments are federal constitutional limits**, and the procedure

for setting aside allegedly void judgments is wholly controlled by the rule, rather than by state law. Although the rule requires a motion for relief from the judgment, it has been held that the court on its own motion may set aside a void judgment provided notice has been given of its contemplated action and the party adversely affected has been given an opportunity to be heard.

12. Federal/W Va. Rules of Civil Procedure 50/56.

13. Virginia Constitution, Article 1, Sec. 11/Code 801-336a (which states):

> The right to trial by jury as described in Article 1, Section 11, of the Constitution of this Commonwealth and statutes thereof **shall be preserved inviolate of the parties.**

14. West Virginia Constitution, Art. III, Safeguards for Life, Liberty and Property.

> No person shall be deprived of life, liberty or property, without due process of law, and the judgment of his peers.
>
> **Right to Jury Trial**: In suits at common law, where the value in controversy exceeds twenty dollars exclusive of interest and costs, the right of trial by jury, if required by either party, **shall be preserved**; . . .
>
> Courts open to all . . . Justice administered speedily.
>
> The courts of this State shall be open, and every **person, for an injury done to him, in his person, property or reputation, shall have remedy by**

due course of law; and justice shall be administered without sale, denial or delay.

15. West Virginia Code 55-7-9, violation of statutes.

16. West Virginia Code 53-1-1, 53-1-2, Ex'or writs.

17. West Virginia Trial Courts Rules, XVII Disq. Of Ct.

18. U. S. and W. Va. Rules of Civil Procedure, 35.

19. West Virginia Code 27-3-1 and 27-3-2, plus others for elimination.

20. West Virginia Constitution, Article 4, 6. Provisions for removal of officials.

> All officers elected as applicable under this Constitution, may . . . be removed from office for official misconduct, incompetence, neglect of duty, or gross immorality, in such manner as may be prescribed by general laws . . .

and Article 4, 9, by House of Delegates with Sup. Ct. Pres., in attendance.

III. STATEMENT OF FACTS

1. The sought mental examination of Petitioner is an attempt to "cover up" violations of the above-cited laws, plus many others that will be discovered if (and when) THIS COURT orders an investigation/prosecution of those sixteen (16) and some others in aiding and abetting obstruction of justice, etc., etc., and on and on it goes.

2. A couple of the illegal acts that some would like swept away are: a) Judge Snead's son was (is) a member of the F & M Bank Branch, Flint Hill, Virginia, when Snead decided to usurp the jury function in the case dismissed by him. [A Pg. 16, I A, 1st paragraph). (Violation of 28 USC Sec 455, (a)(b) **He shall . . . disqualify (4)(5)(I).**] Petitioner subsequent to trial learned of said relationship/board member, etc. It also helped to explain **WHY** Petitioner's counsel (Aschmann) never wrote a complaint Snead would accept. Secondly, when Petitioner's lawyers allowed this to happen without appeal, resistance, etc., it gave Kent (who granted Aschmann's $7,000.00) judgment under the same facts. Those facts are that this Petitioner gathered the documents in both instances that proved the allegations without any doubt . . . she had personal knowledge of same and so testified (since her attorneys would not/did not, see records) allow her to be party (demanded by RCP 19 at very least) used only as witness in former despite her involvement/knowledge with bank officers (she was also bank customer); refused to be intimidated by anyone, including Aschmann; would not aid and abet or become any kind of accessory (thus had very personal interest in justice prevailing in first matter in which Snead presided. Snead and all (except Savasten) went to dinner the night before (after Petitioner's testimony).

Snead usurped jury functions next morning. Lead lawyer for Petitioner bragged to Petitioner about Snead's forthcoming actions (dismissal) on the way into the parking lot the next morning. Kent took his cue from Snead, for, like him, Kent, too, called a break, sent the jury home (without apprising Petitioner/Principals) further allowed arguments (without Principals' Counsel Bowman to participate as is normal) as to what the jury could see/hear, then all of a sudden without movants' "specific grounds therefor" (required by Rule 50), granted directed verdict . . . A Pg 42 . . . note A Pg 43 says . . . "being of opinion" . . . directed verdict . . . "those motions were granted". It was **discretional** and **DISCRETION** neither Kent nor Snead had, without violating Article 6 of the U.S. Constitution **AND RULES 50/56** . . . "no specific grounds" requirement per Rule 50. There are still genuine issues of material fact, therefore, no summary judgment was forthcoming per law in 56, unless one calls "legislating new laws" a part of the adjudication process, which is not possible under the division of powers. A Pg 45, Savasten Affidavit, substantiates some of the above. Savasten, the best of the three attorneys, was retained and paid by Petitioner, but he, too, defected to the bank, misrepresented to the Petitioner and failed (as did all) in duty-owed responsibility to clients (all three) and duty to constitutions/judicial system. Both he and Bowman (Donald, Leesburg, Va. Attorney) admitted Aschmann guilty of malpractice but neither would do anything about it. It apparently made judicials made (as well as F & M) when Petitioner had Bowman recuse as her attorney, so she could personally countersue him for amending over and over, plus many other malpractice acts and omissions. No one should pay an attorney for breach of contract . . . for failure to write a complaint acceptable no matter what the motive for lack of performance on the attorney's part. He was paid by

Petitioner until he proved he was working for the opposition.

3. Approximately the same thing happened in the "Fire Fee" matter. Constituents complained to Petitioner over and over until she promised that when she was billed for "Fire Fee" she would sue for redress. In 1981, the Morgan County (W.Va.) Commissioners took the matter to the voters; it was voted down, and did not pass by the required sixty percent (60%). In 1983, the West Virginia Supreme Court said, in another decision before them for City of Fairmont v. Pitrolo, that "Character of tax is determined not by its label but by analyzing its operation and effect." Then went on to name five elements which made such an ad valorem tax and cited Article X of the West Virginia Constitution when limits exceed Constitutional limits, which it did, and was documented by Petitioner at the time, hoping to get a fast decision at local court (Morgan County) which was involved, etc. It DID NOT HAPPEN. Six courts got involved since the 1990 filing, to include two federal districts. Further, in 1984, Legislators passed 7-17-12 changing "label" of "voter" to "petitioner" and the sixty percent (60%) required of voters by Article X, to 10% by label "petitioners"; trying to circumvent the taxes, they added a line that says "The county commission shall not have a lien on any property as security for payments due under the ordinance." Did that keep the County government from harassing and threatening to take Petitioner's personal and real property, the latter being joined with the sale of her real estate by Hott/Booth/Wilkes who paved the way? Absolutely not . . . why should they not violate this 7-17-12, as well as Constitution Article X, which states . . . "But no increase shall be effective unless at least sixty percent of the qualified voters shall favor such increase" . . . the acts herein are also shocking

to anyone with conscience; also a part of why they sought mental examination.

4. A Pg 28, S. Ct. says: "It is enforcement of the order", Petitioner seeks to prohibit." Correction. It was **ANY** mental examination that Petitioner sought to prohibit, declaring the issue a **legal** one, thusly, **a court decision**, not a doctor's, any doctor. W Va Sup. Ct. should have decided if Petitioner was (is) within her rights to expect Constitutions and stare decisis should prevail over the unconstitutional judgments of trial courts who violated oaths of office to hand down the judgments that opponents want Petitioner to be governed by. Case in point: read 10607, A Pg 42, referenced above, and Pg 45, which shows what was proved in documentation on day of trial . . . and WHY Kent usurped jury function.

5. As usual, Petitioner's policy is to make sure of facts before alleging/accusing anyone of illegal acts. To that end, she wrote A Pg 47 herein. Most of those consulted opinions were that **Petitioner WON HER WRIT, BUT AMBIGUOUS A Pg 10 and 41 (front/back) say "writ granted as moulded".**[Two judges (ret'd.) used stronger, unprintable here, language for same.) The only response evident was the 97-ADM-11 Order of Respondent Workman retaining Respondent Hamilton in the matter on response to Petitioner's Motion to Disqualify same (A Pg 55). This came as no surprise as it was a second time she retained unethical/illegal courts herein . . . she thought, per acts, it okay for Respondent Attorney Booth to meet ex parte with J. Wilkes to get himself appointed commissioner so as to sell Petitioner's property (on void judgment). Aschmann's name on Petitioner's real estate as of October, 1994; never paid of any mortgages nor taxes to date. Petitioner paid taxes until last time,

when it was decided she should pay Aschmann's rate (twice as high) rather than her own. Wilkes obliged without ever seeing the file, which was obvious from the facts. Booth admitted same before he realized he was talking to Petitioner's back facing a court reporter who also furnished Petitioner an affidavit of same. Wilkes subsequently recused to make way for Hott to come into the matter. Hott admits he does not know the Constitution, but then tells on self by recognizing same when it is quoted . . . all playing games to harass Petitioner.

6. Due to item 5 above, Petitioner still wanted to make sure of the facts, thus the Petition to entire Supreme Court, A Pg 65 with Pgs 92 through 96 as exhibits thereto.

7. Realizing that A Pg 99 (when it came) would show Respondents Hamilton/Weiss needed Petitioner's help (A Pg 69, item 4) to write their order, (A Pg 99), she thought the **irony** (or seeking mental exam because Petitioner does not understand the legal process, etc.) would certainly be of interest. Not so apparently. Before Petitioner could get her Addendum to Petition in, (A Pg 101), on March 27, 1997, W Va Sup. Ct. had made their decision on March 20, 1997 (A Pg 110). (Petitioner received it March 29, 1997.) [Please take judicial notice.] This Petition received at W Va Sup. Ct. March 13, 1997, (A Pg 98), and seven (7) days later they show a decision herein. Interesting? Life and death situation, or vindictiveness? They have Petitions for Writs for months and no action that anyone knows about. It is, again, consensus of opinion, that it is to try to "shut-up Petitioner", stop her from proving her allegations, intimidate and try to discredit her testimony and possibly to keep her from prosecuting

criminally. W Va Sup. Ct. allows presentation to grand jury such evidence as Petitioner has, pro se, and why not since no civil remedy has been forthcoming, to date.

8. While Order writers were learning how to write orders from Petitioner and before making appointment with Dr. Shapiro personally, he phoned Petitioner to state, "They got nasty with me" (wrong side of him) because he had not given them what they wanted and Petitioner had not yet kept the appointment until the 8th of April, 1997. The halfway, not in compliance with Rule 35 requirements, Order did not meet Rule 35 requirements . . . neither A Pg 1 nor A Pg 92. But, apparently Dr. Shapiro was "nastied" into filing a "confidential report" on April 1, 1997, without apprising Petitioner, who found same in file when she checked same, which she has learned must be done every so often so as to learn what is (and is not) in said files (where Petitioner is a party).

9. Petitioner understood (and emphasized) to Dr. Shapiro, and stated she could pay for her examination on April 8, 1997; that she could have a copy of whatever he reported to the court and of her file. He even agreed to part of it, after the appointment was kept, and before getting started. Instead of an hour, he kept Petitioner two and one-half (2+1/2) hours and was still talking going down the hall on her way out. He had also said he wished he had done like Dr. Soule, not getting involved, but he also backed down on giving a copy of the report, pay from Petitioner, etc. (It is Petitioner's position that the taxpayers should not have to pay for the fights Petitioner is having to try to get the Constitutions upheld . . . it is not taxpayers' fault that our judicial system has gone amuck to a great degree . . . people cannot be responsible for others faults, only their own, legally.) Petitioner feels the

same way about a guardian ad litem. Prosecutors are there to prosecute, that is what is needed, that will vindicate Petitioner, and she can point prosecutor (special) right to the evidence necessary to prosecution. Additionally, Dr. Shapiro asked Petitioner if she would tell him with whom she consults, legally. The answer to that was "NO, I will not!". All of those consulted (within the legal profession) certainly appreciated that . . . and first thing was "Why would he want to know that; who asked him to find out?"

10. It should tell us something when good ethical/legal professional judicial persons are afraid to stand publicly for what is right. That in itself does not speak well for courts who have control over licensing . . . and what about the state courts who appoint and retain non-judicial, ex parte, malicious, vindictive, unconstitutional courts on the bench? WHY would they do that? Virginia Supreme Court appointed Snead to preside . . . Kent appointed himself (he was chief judge) to preside in 10607, so reported to Petitioner . . . she does know the Honorable Judge Haddock appeared ethical, the one time he did preside, for a few minutes, but Kent took Haddock out to put himself in.

11. As A Pgs 107 through 114 show, Respondents want to keep copies and secret reports of Dr. Shapiro from Petitioner/all. She KNOWS laws do not support this action either . . . the entire thing is illegal, again. W Va Code 27-3-1, 27-3-2 does not allow these acts any more than U.S. Constitution Article 6, Bill of Rights, 14th Amendment and various other laws have allowed taking property over $20.00 without trial by jury and other due process and/or usurpation of powers.

12. The Constitutions, both state and federal,

provide for removal from office upon conviction of crimes . . . it happened before, in Virginia with one Judge Coles. The Supreme Court sitting at the time left the judge in prison; no habeas corpus granted . . . for Title 18, Ch. 13, Sec. 244, Crimes. Same one used herein, only different section . . . here Sec. 241/242 applies to mention only part of statutes applicable.

13. A Pg 1 should have never been written . . . A Pgs 4 and 5 so testify. Mr. Justice McHugh's law clerk has, on A Pg 33 (if same wrote opinion) misrepresented page 776 Fed Prac and Proc by omission of the entire paragraph, which goes on to say

> For example, the scope of the rule has been extended to permit a court to appoint a guardian ad litem to represent the interests of **unborn children**. In another case, a three-judge court appointed a guardian ad litem for **seven inmates of a mental institution** who had brought a class action challenging the constitutionality of a state mental health statute. **In determining the extent of its power under Rule 17(c), the court should be guided by its appraisal of the particular party's ability to protect his interests in the litigation adequately.**

It is hard for Petitioner or any ordinary prudent person to conceive how a paralegal with twenty (20) years of experience (Certified 1977 after taking mini bar exam; taught by attorneys who reportedly are expert in their subjects); who in addition has three (3) college degrees, as well as post graduate certification; half a masters/ communications/minor journalism with a natural thirst for knowledge always, can possibly be accused of NOT understanding the legal process

IV. DISCUSSION OF THE LAWS

14. Treaties (Michies Jurisprudence, Am Jur, Fed Prac and Proc, and 28 USC 60.25 all state such as

> "If, however, the court's action involves a plain usurpation of power, the court's judgment is void, even though it has the requisite jurisdiction over the parties or res, as the case may be.

and In all cases of usurpation of power, the judge's judgment is void, not voidable, even if he originally had jurisdiction of the matter and the parties.

and In those cases where the jurisdiction of the court depends upon compliance with certain mandatory provisions of law, the court's order, spread upon its order book must show compliance or jurisdiction is not obtained.

Neither Kent nor Snead Orders show compliance with the mandatory provisions of law, but does show usurpation of power . . . also lack of Due Process, therefore, both Orders are doubly **void. No subsequent court has the power to make same valid.** Look at Fed Prac & Proc 2862 . . . "The limits on the power of courts to enter valid judgments are federal constitutional limits" . . . That statement is in agreement with Article 6, . . . the supremacy clause . . . that all judges shall be bound thereby. Additionally, 2862 further says there are no time limits . . . no laches apply on 60(b)(4).

THIS COURT said in Ex Parte Siebold, 100 US 371, 25 L Ed 717:

> The Constitution and the laws of the United States are the supreme laws of the land and

to them every citizen of every state owes obedience in his individual or official capacity.

Thus, Petitioner's fights for the last (over) ten (10) years . . . Additionally, the word "shall" is considered by all as mandatory, except Respondents and 14 courts apparently, who would like to "cover-up" the acts of officers who have violated the above herein cited laws. Petitioner can document and legally prove her allegations herein of violations of statutes. This is why she has always subsequently (by 14 others) been denied meaningful access to courts by those 14 W Va Code 55-7-9 says:

> Any person injured by the violation of any statute may recover from the offender such damages as he may sustain by reason of the violation, although a penalty or forfeiture for such violation be thereby imposed, unless the same be expressly mentioned to be in lieu of such damages.

In addition Title 15, 1692, has been violated as well as W Va Code in agreement therewith . . . (covers unfair debt collection).

> On Confidentiality herein,
> 27-3-1(a), Definition of confidential information; disclosure.
> (a) Communications and information obtained in the course of treatment of evaluation of any client or patient shall be deemed to be "confidential information" and shall include the fact that a person is or has been a client or patient ... persons participating in ... diagnosis of treatment ... all diagnosis or opinions formed regarding client's or patient's physical, mental or emotional

condition; any advice, instructions or prescriptions issued . . . It does not include information which does not identify client or patient...

The above has already been violated by both the court and Dr. Shaprio. Look at the court's supposed Orders. Said Orders are public record (and should be in this instance because of the illegality of same).

(b) Confidential information may be disclosed;
(1) ... involuntary examination per 27-5-4, 27-5-2, 27-5-3
(2) proceeding Six-A (27-6A-1)
(3) Pursuant to court order if confidentiality deemed not important . . .
(4) To protect against danger to party
(5) For treatment and internal review where patient is being treated . . .

Most of the above covered in Petitioner's letter to Dr. Shapiro by A Pg 109/110 herein.

W Va Code 27-3-2. Authorization of disclosure of confidential information. No consent or authorization for the transmission or disclosure of confidential information shall be effective unless it is in writing and signed by the patient or client by his legal guardian. Every person signing an authorization shall be given a copy.

Petitioner did not give authorization for information to be given to the court OR anyone except her, which she demanded, but such was given by him because someone was "nasty" to him on April 1, 1997, (**before** he saw

Petitioner). He, like the court, ignored his own rules to deny Petitioner a copy of her records. It appears that the West Virginia Supreme Court wants this done and is abusing their power to that end. (Petitioner submits that there has to be big money involved: power of some kind; blackmail; cronyism; politics; whatever it is (possible combinations) it has no place in the judiciary, making, as Mr. Justice Marshall said . . . "A mockery of the Constitution" (of United States and Article 6). Article 2, Sec. 4, provides for removal of such persons. Article 3 states judges hold office during good behaviour. Acts as herein complained of cannot be termed "good behaviour".

V. CASE LAWS APPLICABLE

15. In Johnson v. Zerbst, 304 US 458, THIS COURT said court lost jurisdiction when denial of counsel per Sixth Amendment not complied with ... court no longer had the power to continue .... thus judgment void. In Bass v. Hoagland, 172 F 2d 205, court said (based on Johnson, supra), whether it be civil or criminal, judgment without due process of law renders judgment void and loss of jurisdiction referenced as Johnson, supra,. In Daniels v. Williams, 106 S Ct 678, Mr. Justice Stevens' dicta said re 14th Amendment, due process gives rise for 1983 action if Bill of Rights violated, regardless of state remedy ... violation complete as soon as prohibited action taken. Barger v. State of Kan, 620 F Supp 1432, in agreement with above, states: when officer acts non-judicially/ unconstitutionally, officer is stripped of official capacity and subjected to consequences of conduct. Beard v. Udall, 648 F 2d 1264, in agreement with above said judge does not enjoy judicial immunity if judge's actions were either non-judicial or taken in clear

absence of jurisdiction. Lync v. La Porta Sup Ct 3 2, 789 2d 554 said "State refusal to allow federal question presented ... "violated Article 6, Cl. 2, U.S. Constitution. Ryland v. Shapiro, 708 F 2d 967, in agreement said "Lack of meaningful access to court" fails to pass Constitutional muster; Article 6, Cl. 2. 42 USC 1983 applicable. Wood v. Strickland, 95 S.Ct. 992, states: "Defendant oversteps immunity boundary when acts in manner which he knows or reasonably should know will violate constitutional rights, or if acts with malicious intent to injure."

All of the above are based on THIS COURT'S STARE DECISIS, or is THIS COURT'S DECISION. Virginia/West Virginia have heretofore been in agreement. In Marris v. Deal, 54 S.E.2d 161, Va S. Ct said that a judgment is void for abuse of power. Slaughter v. Commonwealth, 284 S.E.2d, said adjudication process showed lack of due process, therefore, judgment "void ad initio" ... W Va Sup. Ct. said in Cruikshank v. Duffield, 77 S.E.2d 600, court's action in excess of jurisdiction is void. In Mann v. Golub, 384 S.E.2d 847 (1989, same judge and year (one of 14/he denied Petitioner) no jury decision in controversy over $20.00, judgment void. In Perkins v. Hall, 123 W Va 707, Full faith/credit not owed on jurisdictional void judgment.

16. On Rule 50/56, in Anderson v. Liberty Lobby, Inc., 447 US 242, THIS COURT said: "credibility determination" ... evidence ... from facts "are jury functions, not those of a judge, whether the judge is ruling on a motion for summary judgment or on a motion for directed verdict." Garrison v. United States, 62 F 2d 412, "Trial judge may not direct verdict against plaintiff, where there is substantial evidence to support plaintiff's

case." Mr. Justice Marshall said in Cooper v. Aaron, 385 US 1, "No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it" ... if judgments of the courts of the United States annul, at will, "the Constitution itself becomes a solemn mockery." (quoting United States v. Peters, US 3 L Ed 53). Ex Parte Virginia, 100 US 670, is the case where THIS COURT let the judge stay in jail for violation of civil rights ... since, very publicly known, was the Rodney King violators, jailed. W Va Sup. Ct. said in Shobe v. Latimer, 253 S.E.2d 54 (1979),. "The citizen in our system of government has the right to expect that his elected officials, agents, and appointees **shall** comply with the law". ***THIS IS ALL PETITIONER HAS EVER WANTED/SOUGHT.*** Jordan v. Gilliam, 500 Fed Rptr 2d 702, states there is no discretion on the part of courts on void judgments/stare decisis. W Va Sup. Ct. said in State ex rel. Limley, 269 S.E.2d 850 (1979), Mandamus proper procedure for void judgment; Blair v. Maynard, 174 W Va 247 (1984), S. Ct. said: "The right of self-representation in civil proceedings is a fundamental right" (under W Va Constitution Article 3, 17) "which cannot be arbitrarily or unreasonably denied." This was pointed out in briefs to all concerned but without "just cause" RCP 35 is being abused by power of courts excessively, arbitrarily and unreasonably. Martin & Seibert were so sure they would get what they sought, they did not bother to answer the amended complaint they demanded, on time. An honest court would order the default judgment paid under these facts and laws applicable.

VI. CONCLUSION

It is clear that there has been years of usurpation of power by courts herein; that it is documented (of record); that stare decisis of United States Supreme Court in support

of the Constitution does not allow such usurpation of power; that the Supreme Courts of Virginia/West Virginia heretofore has been in agreement with United States Supreme Court on same; that all judicial officers KNOW, or reasonably should know, they have violated Petitioner's civil rights over and over; that same has taken property without due process; that acts in excess of jurisdiction are void; that jurisdiction cannot be obtained and/or retained when courts act unconstitutionally, non-judicially; ex parte; and in excess/outside statutes as written; that all have a duty, individually and/or official capacity, to support federal laws; that Aschmann has no legal right to have his name on Petitioner's real property; that Morgan County state/county officials had no legal right to take, twice, "Fire Fees" and threaten to take the personal property (in addition to real property assets); that it was not proper to "join" the two causes (Morgan County Fire Fees and Virginia Attorney fees); that non-judicial acts by courts are not valid; that only constitution/statute give courts jurisdiction/power to act; that separation of powers does not allow courts to legislate; that legislators have no power to change/violate stare decisis of Supreme Courts; that Petitioner should be allowed to prosecute this matter 95-C-37 according to the laws applicable all; that W Va Sup. Ct. has violated their own Decision in Blair, supra, as well as 28 USC 1654, First Amendment, etc., on self-representation. PLEASE TAKE JUDICIAL NOTICE OF FACTS/LAWS, to include 28 USC 455 ... judge SHALL disqualify if he has a person within third degree is ... an officer ... of a party with financial interest (b)(4)(5)(i)(d)(4). Take notice of violations of oaths of office and "war" against Constitutions; that a thorough constitutional investigation and prosecution of all involved (from lowest to highest) should be forthcoming for public welfare, the judiciary as a whole and lastly such will vindicate Petitioner. Please exercise and employ 28 USC, Sec. 2106. Banks, money, and corporate institutions should not control the judicial system.

VII. PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for relief as follows:

a. mandamus issue commanding West Virginia Supreme Court to follow their own constitutional decision heretofore in Blair, supra, and in compliance with United States Constitution and 28 USC, Sec. 1654.

b. Prohibition issue against Respondent Hamilton forbidding any further presiding in 95-C-37, herein.

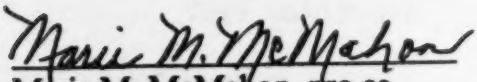
c. Writ of Prohibition issue to prohibit Respondent Weiss (or any Martin & Seibert attorney) from seeking any mental examination of Petitioner and/or they, or any state, county or federal officer from denying access to courts per applicable laws wherein Petitioner is a party or may/should be per rules.

d. Writ of mandamus issue to cause complete copies of any psychiatric records given to any clerk or court (whoever) at any time or place, by Dr. Shapiro or any one connected therewith, without Petitioner's permission.

e. Writ (Order) issued to cause investigation/ prosecution of judicial officers and any institutions involved, constitutional laws applicable, in all cases in which Petitioner is witness/party in Virginia/West Virginia. Case numbers will be gladly furnished.

f. Any further redress or actions THIS COURT deems just.

Respectfully submitted,



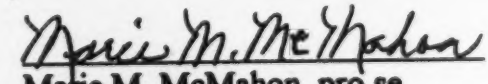
Marie M. McMahon, pro se
103 Pratt Street
Berkeley Springs, WV 25411
(304) 258-1117

VERIFICATION

STATE OF WEST VIRGINIA

COUNTY OF MORGAN, to-wit:

I, Marie M. McMahon, Petitioner herein, hereby certify and state the foregoing facts and laws are true and correct to the best of my knowledge and belief and to the extent based upon information and belief, they are true and correct to the best of my knowledge, I believe them to be true. All are well grounded in facts and law and is warranted thereby. Petition is not interposed for an improper purpose.



Marie M. McMahon, pro se
103 Pratt Street
Berkeley Springs, WV 25411
(304) 258-1117

Taken, sworn to and subscribed before me, a Notary Public, in and for the state and county aforesaid, this 21st day of May, 1997.

Marilyn M. Hall
Notary Public

My commission expires: June 13, 2000

OFFICIAL SEAL
NOTARY PUBLIC, STATE OF WEST VIRGINIA
MARILYN M. HALL
801 Johnson Mill Rd. Berkeley Springs, WV 25411
My Commission Expires June 13, 2000

APPENDIX

IN THE CIRCUIT COURT OF MORGAN COUNTY, WEST VIRGINIA

MARIE M. MCMAHON,
PLAINTIFF,

VS. **CIVIL ACTION NO. 95-C-37**

JOHN P. ADAMS, ET AL,
DEFENDANTS.

ORDER

This matter came before the Court on April 8, 1996 upon the motion of Defendants Martin & Seibert L.C., Paul Weiss, Susan Snowden, and Daniel Booth to determine the Plaintiff's mental competency. The Plaintiff was present pro se as was Defendant Paul Weiss. Defendants Donald Hott, Morgan County Fire Board, Howard Tritapoe, Glen Stotler, Donald Sharp and John P. Adams were represented by Lucien Lewin, Esquire, the remaining Defendants were represented by Paul Weiss, Esquire.

Upon consideration of the pleadings and papers filed herein and the arguments of the parties and their counsel, the Court finds that:

1. There is no cause or reason to question the general sanity or mental competency of the Plaintiff.

2. However the Court has substantial concern with regard to the Plaintiff's mental ability to rationally comprehend and accept matters relating to the present litigation and litigation that has preceded it in other cases, both here and in other venues as reflected by the pleadings and papers filed herein.

Accordingly, the Court finds that good cause has been shown for the appointment of a competent psychiatrist to

examine Plaintiff and report back to the Court concerning the Plaintiff's ability to proceed with the present action in her own right or whether a guardian ad litem should be appointed.

WHEREFORE it is ORDERED that Bradley Soule, MD be and hereby is appointed to examine and evaluate the Plaintiff and report back to Court within 30 days of the date of this Order his findings as to the concerns of the Court heretofore stated. Concomitantly therewith, Dr. Soule shall transmit a copy of this report to all parties hereto. Should Dr. Soule fail to do so, the Clerk of the Court is authorized and ordered to provide a copy of Dr. Soule's report to any party hereto requesting same. The Clerk of the Court is further ordered, upon entry of this Order, to transmit to Dr. Soule copies of Defendant's present motion, all exhibits thereto, the Plaintiff's opposition thereto and all other pleadings and papers contained in the record of the present case pertaining to the Plaintiff's prosecution of other civil actions. Dr. Soule is instructed by the Court that it requires no general finding of the Plaintiff's general competency. Rather, Dr. Soule should limit his evaluation and report to the question of whether the Plaintiff is competent to act responsibly with regard to this and other civil actions in which she has been involved and whether the appointment of Guardian ad litem would be in the Plaintiff's interest.

The Plaintiff's exceptions to this Order are noted and preserved for the record. The Defendant's Motion to Enjoin the Plaintiff from instituting other civil actions is DENIED, and the Defendant's exceptions thereto are noted and preserved for the record. The present action is stayed until such time as Dr. Soule has reported to the Court and, should Dr. Soule indicate that the appointment of a Guardian ad litem would be in order, a Guardian ad litem has been duly appointed. Until such time resolution of all pending motions is continued. The costs of the evaluation by Dr. Soule shall be taxed as costs herein.

The Clerk of this Court shall transmit an attested copy of this Order to all parties of record.

S/ John M. Hamilton
JUDGE JOHN M. HAMILTON,
MORGAN COUNTY

Approved as to Form:
S/ Paul Weiss [P. B. Weiss]
S/ Lucien G. Lewin [Lucien G. Lewin]

A TRUE COPY ATTEST:
S/ Betty R. Moss
Clerk of the Circuit Court
of Morgan County, WV
S/ By Phyllis M. Hansroth,
Deputy

Note:
Plaintiff seeks stay in order to seek Writ of Prohibition in this matter.
S/ Marie M. McMahon

[Army Seal] [50 Year Seal]

DEPARTMENT OF THE ARMY
WALTER REED ARMY MEDICAL CENTER
WASHINGTON, DC 20307-5001

Reply to
Attention Of:

March 13, 1996

Marie M. McMahan
103 Pratt Street
Berkeley Springs, WV 25411

Dear Ms. McMahan:

As you know, I met with you for one hour today to perform psychiatric evaluation of you at your request. As I discussed with you, I did not find you to have a psychiatric disorder.

Please call or write if you have any questions.

Yours sincerely,
S/ John K. Bartz
John K. Bartz, M.D., Ph.D.
Lieutenant Colonel, US Army
Staff Psychiatrist
Outpatient Psychiatry Service

Stamp: PLAINTIFF'S EXHIBIT #1
95-C-37
4-8-96
A TRUE COPY, ATTEST:
S/ Betty R. Moss
Clerk of the Circuit Court of
Morgan County, West Virginia
S/ Judy L. Crosby, Deputy

FAMILY MEDICINE OF BERKELEY SPRINGS
ANDREW J. BERENS, M.D.
412 North Washington Street
Berkeley Springs, V 25411
Telephone (304)258-4408
Fax (304) 258-9841

12 March 1996

To Whom It May Concern:

Ms. Marie McMahon has been my patient for several months and at no time during any of our contact has she exhibited any irrational type behaviors that would give me cause for concern about her mental status. She has consistently been awake, alert and oriented with no apparent neurologic deficits noted by me. She has never demonstrated any instability in her mental status during any of our visits.

Sincerely,
S/Andrew J. Berens, M.D.
Andrew J. Berens, M.D.
Assistant Professor
Family Medicine of Berkeley Springs
WVU Dept. of Family Medicine

AJB/ms

Stamp:
PLAINTIFF'S EXHIBIT #2
95-C-37 4-8-96

A TRUE COPY, ATTEST:
S/ Betty R. Moss
Clerk of the Circuit Court of
Morgan County, WV
S/Judy L. Crosby, Deputy

MARTIN & SEIBERT, L.C.
Attorneys At Law
Since 1908
119 South College Street - Post Office Box 1286
Martinsburg, West Virginia 25401-1286
Telecopier: (304)267-0731-Evening Service: (304) 264-2496
Telephone: (304) 267-8985

April 11, 1996

Marie McMahon, *pro se*
103 Pratt Street
Berkeley Springs, WV 25411

RE: ***McMahon v. Adams, et al.***
Civil Action No. 95-C-37

Dear Ms. McMahon:

Betty Moss has informed us that Dr. Soule refuses to perform the psychiatric evaluation ordered by Judge Hamilton on April 8, 1996 in the above-styled case. She further advises that she has contacted Judge Hamilton concerning this and that he has instructed the parties and their counsel to designate an acceptable psychiatrist who would be willing to perform the evaluation. I have discussed the matter with Mr. Lewin and we are agreeable to permitting you to designate the psychiatrist of your choice, so long as that person is licensed in West Virginia.

Accordingly, we request that you inform us on and the Court or before April 18 of the name and address of the psychiatrist you wish to designate so that we may prepare an amended order for Judge Hamilton's signature. If you have not so informed us by this date, we will recommend to Judge Hamilton that Dr. Shapiro or Dr. Halprin of the East Ridge Health System in Martinsburg, who have expressed a willingness to perform the evaluation, be designated.

Very truly yours,
MARTIN & SEIBERT, L.C.
By: S/ Paul B. Weiss
Paul B. Weiss

cc: Court file
Hon. John Hamilton
Lucien Lewin, Esq.

Practicing in West Virginia, Maryland, Virginia, Pennsylvania and the District of Columbia
Charles Town, Commercial, Real Estate and Maryland Office locations.

STATE OF WEST VIRGINIA **95-C-37**

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 16th day of May, 1996, the following order was made and entered:

State of West Virginia ex rel. Marie M. McMahon, Petitioner

vs.) No. 23422

Honorable John M. Hamilton, Special Judge of the Circuit Court of Morgan County, and John P Adams, et al., Respondents.

On a former day, to-wit, April 8, 1996, came the petitioner, Marie M. McMahon, pro se, and presented to the Court her petition praying for a writ of prohibition to be directed against the respondents, the Honorable John M. Hamilton, Special Judge of the Circuit Court of Morgan County, and John P. Adams, et al., as therein set forth. Upon consideration whereof, the Court is of opinion that a rule should be awarded herein. It is therefore considered and ordered that a rule do issue directed against the respondents returnable before this Court at its courtroom in the City of Charleston, County of Kanawha, at ten o'clock, a.m., on Tuesday, the 10th day of September, 1996, commanding and directing the said respondents to show cause, if any they can, why a writ of prohibition should not be awarded against the Honorable John M. Hamilton, Special Judge of the Circuit Court of Morgan County, as prayed for by the petitioner in her said petition.

Service of a copy of this order upon the respondents aforesaid shall have the same effect as the service of a formal writ.

Rec'd.
5-28-96
10 AM-Mail
S/ BRM

A True Copy

Attest: S/ Ancil G. Ramey
Clerk, Supreme Court of Appeals

CC 5-28-96:
Judge Hamilton
McMahon
Weiss
Lewin

Civil
Order Book 23, Page 695, Initial S/ PMH, Date 5/28/96

IN THE SUPREME COURT OF

APPEALS

OF WEST VIRGINIA

September 1996 Term

No. 23422

STATE OF WEST VIRGINIA
EX REL. MARIE M. McMAHON,
Petitioner

v.

HONORABLE JOHN M. HAMILTON,
SPECIAL JUDGE OF THE CIRCUIT COURT
OF MORGAN COUNTY, AND
JOHN P. ADAMS, ET AL.,
Respondents.

Petition for Writ of Prohibition

WRIT GRANTED AS MOULDED

Submitted: September 25, 1996
Filed: December 13, 1996

Marie M. McMahon

Berkeley Springs, West Virginia

Pro Se

Stamp: FILED DEC. 18, 1996
ANCIL G. RAMEY, CLERK
SUPREME COURT OF
APPEALS OF WEST VA.

Lucien G. Lewin

Steptoe & Johnson

Martinsburg, West Virginia

Joanna I. Tabit

Steptoe & Johnson

Charleston, West Virginia

Attorneys for Respondents, John P. Adams,

Honorable Donald C. Hott, Glen Stotler, Donald Sharp,

Morgan County Fire Board and Howard Trittipoe

Paul B. Weiss

Martin & Seibert

Martinsburg, West Virginia

Attorney for Respondents, Paul B. Weiss, Susan R. Snowden, Daniel T. Booth and Martin & Seibert, L.C.

CHIEF JUSTICE McHUGH delivered the Opinion of the Court

JUDGE RECHT sitting by temporary assignment.

SYLLABUS BY THE COURT

1. ""A writ of prohibition will lie where the trial court does not have jurisdiction or, having jurisdiction, exceeds its legitimate powers." Syllabus Point 3, State ex re. McCartney v. Nuzum, 161 W. Va. 740, 248 S.E.2d 318 (1978).' Syllabus Point 4, Pries v. Watt, 186 W.Va. 49, 410 S.E.2d 285 (1991)." Syl.pt.2, State ex rel. Reed v. Douglass, 189 W. Va. 56, 427 S.E.2d 751 (1993).
2. "In determining whether to entertain and issue the writ of prohibition for cases not involving an absence of jurisdiction but only where it is claimed that the lower tribunal exceeded its legitimate powers, this Court will examine five factors: (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in any way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression. These factors are general guidelines that serve as a useful starting point for determining whether a discretionary writ of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight." Syl. pt. 4, State

ex rel. Hoover v. Berger, No. 23737, ___ W. Va. ___, ___ S.E.2d____ (Nov. 15, 1996).

3. Under W. Va. R. Civ. P. 17(c), whenever an infant, incompetent person, or convict has a duly qualified representative, such as a guardian, curator, committee or other like fiduciary, such representative may sue or defend on behalf of the infant, incompetent person, or convict. If a person under any disability does not have a duly qualified representative he may sue by his next friend. The court shall appoint a discreet and competent attorney at law as guardian ad litem for an infant, incompetent person, or convict not otherwise represented in an action, or the court shall make such other order as it deems proper for the protection of any person under disability.
4. Where a substantial question exists regarding the mental competency of a party not otherwise represented to proceed with the litigation presently before the court, the court may, where there is good cause shown, require the party to undergo a mental examination in order to determine whether a guardian ad litem should be appointed to protect the party's interests pursuant to West Virginia Rule of Civil Procedure 17 (c).
5. "W. Va. Code, 27-3-1(a), provides for confidentiality of communications and information obtained in the course of treatment and evaluation of persons who may have mental or emotional conditions or disorders, subject to the exceptions set out in W. Va. Code, 27-3-1(b)." Syl. pt. 1, State v. Simmons, 172 W. Va. 590, 309 S.E.2d 89 (1983).

6. When a court orders a party to undergo a mental examination by a psychiatrist to determine whether a guardian ad litem should be appointed to protect the party's interests under West Virginia Rule of Civil Procedure 17(c), the court shall receive a copy of the appointed psychiatrist's report of such examination. Pursuant to W. Va. Code, 27-3-1(b)(3) [1977], the court may release such report only if it finds that it is sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining the confidentiality established by W. Va. Code, 27-3-1(a) [1977].

McHugh, Chief Justice:

Pro so petitioner Marie McMahon, invoking this Court's original jurisdiction pursuant to W. Va. Code, 53-1-3 [1933], seeks to prohibit enforcement of an order entered April 8, 1996, in the Circuit Court of Morgan County by the Honorable John M. Hamilton, special judge, a respondent herein. In that order, Judge Hamilton, upon the motion of respondents Martin & Seibert, L.C., Susan R. Snowden, Daniel T. Booth and Paul B. Weiss, ordered petitioner to undergo a psychiatric examination to determine whether she is mentally competent to proceed with the underlying civil action instituted by her against respondents and others such that a guardian ad litem should be appointed to protect her interests.

This Court[1] has before it the petition, the responses thereto, and all matters of record. For reasons discussed below, petitioner Marie McMahon's request that this Court prohibit enforcement of that portion of the circuit court's order directing her to undergo a mental examination is denied.

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[1] The Honorable Arthur M. Recht resigned as Justice of the West Virginia Supreme Court of Appeals effective October 15, 1996. The Honorable Gaston Caperton, Governor of the State of West Virginia, appointed him Judge of the First Judicial Circuit on that same date. Pursuant to an administrative order entered by this Court on October 15, 1996, Judge Recht was assigned to sit as a member of the West Virginia Supreme Court of Appeals commencing October 15, 1996 and continuing until further order of this Court.

However, this Court finds that it was error for the circuit court to direct the appointed psychiatrist to transmit copies of the resulting report to the respondents herein. Accordingly, enforcement of that portion of the circuit court's order is prohibited.

I.

A.

In 1984, petitioner acting pursuant to a general power of attorney granted her by Bart and Alice Whirley, instituted a lawsuit against six defendants in the Circuit Court for the City of Winchester, Virginia, attacking the probate of the estate of one Ann Schrader. By order dated October 15, 1986, that lawsuit was dismissed.

Subsequently, Charles G. Aschmann, Jr., the attorney hired by petitioner in the above-mentioned probate action, sued petitioner and the Whirleys for payment of $7,000 in legal fees associated with that action. Petitioner filed a counterclaim against Mr. Aschmann, alleging legal malpractice. By order of February 9, 1987, the Circuit Court for the City of Alexandria, Virginia granted Mr. Aschmann's motion for a directed verdict [2] as well as his motion to strike petitioner's counterclaim. The court further ordered petitioner to pay Mr. Aschmann $7000 plus interest from

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[2] According to the court's February 9, 1987 order, though a jury was empaneled to hear the case, the court directed a verdict for Mr. Aschmann after all of the parties presented their cases. We note that Mr. Aschmann's motion for voluntary nonsuit against the Whirleys was granted and that the action against them was dismissed without prejudice.

January 5, 1987. Petitioner never appealed that judgment order.

The remaining facts of this case consist primarily of a multitude of lawsuits instituted by petitioner, pro se, in a variety of state and federal courts against a various medley of defendants, among them, federal and circuit court judges, lawyers and clerks of court. Petitioner's litigious behavior is rooted in her adamant belief that she was denied her constitutional right to a trial by jury when the above-described directed verdict was rendered against her for $7,000 in unpaid legal fees. Petitioner contends that the defendants against whom she has asserted, and in some cases, reasserted, this claim have all conspired to deprive her of due process. Though recitation of petitioner's many court actions is repetitive and, at times, confusing, we believe it necessary to the ultimate resolution of this case, particularly with regard to respondents' position that petitioner does not comprehend the meaning and effect of countless lawsuits she has instituted for more than a decade.

B.

Pursuant to the Full Faith and Credit clause of the United States Constitution, Art. IV, Sec. 1, the Circuit Court of Morgan County entered the above-described judgment of $7,000 for nonpayment of legal fees against petitioner and in favor of Mr. Aschmann. The circuit court further denied petitioner's counterclaim that the $7,000 judgment was void on the ground that, by directing a verdict in Mr. Aschmann's favor, the Circuit Court for the City of Alexandria, Virginia had denied petitioner her constitutional right of trial by jury.

Petitioner subsequently filed petitions for appeal with this Court regarding the Morgan County Circuit Court's dismissal of her counterclaim against Mr. Aschmann and the entry of the $7,000 judgment for nonpayment of legal fees in favor of Mr. Aschmann. This Court denied petitioners' petitions for appeal by orders of April 26, 1989 and July 9, 1990. By order of December 10, 1990, the Supreme Court of the United States denied petitioner's petition for writ of certiorari of this Court's July 9, 1990 order.

In the meantime, petitioner instituted an action in the United States District Court for the Eastern District of Virginia in an effort to collaterally attack the $7,000 judgment for nonpayment of legal fees in favor of Mr. Aschmann. This Court denied petitioners' petitions for appeal by orders of April 26, 1989 and July 9, 1990. By order of December 10, 1990, the Supreme Court of the United States denied petitioner's petition for writ of certiorai of this Court's July 9, 1990 order.

In the meantime, petitioner instituted an action in the United States District Court for the Eastern District of Virginia in an effort to collaterally attack the $7,000 judgment for nonpayment of legal fees. In that case, petitioner named as a defendant the Honorable Donald Kent, the judge who presided over the nonpayment of legal fees proceeding and who signed the order awarding Mr. Aschmann $7,000 in legal fees. Petitioner also named as defendants the attorney who represented Mr. Aschmann and whose motion for a directed verdict was granted in that case, as well as the attorney who also represented Bart and Alice Whirley, on whose behalf petitioner instituted the original probate action. Petitioner alleged that these defendants

conspired to deny her the constitutional right to a trial by jury. This action was dismissed as to all defendants. Petitioner's subsequent appeal of this order to the Fourth Circuit Court of Appeals was denied, as was her petition for writ of certiorari to the Supreme Court of the United States.

Petitioner, at the same time[3], instituted an action against Mr. Aschmann in the United States District Court for the Northern District of West Virginia in yet another effort to attack the $7,000 judgment. This action was transferred to the United States District Court for the Eastern District of Virginia where Mr. Aschmann'' motion for summary judgment was granted. Though petitioner's action was dismissed with prejudice, she nevertheless filed a "motion for reconsideration" and a motion to vacate the judgment

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[3] Also during this time, petitioner filed a legal malpractice action in Morgan County Circuit Court against attorney David H. Savasten who, along with Mr. Aschmann, represented Bart and Alice Whirley in the original probate action. The circuit court, the Honorable Patrick G. Henry, III, judge, dismissed petitioner's action and by order of April 18, 1990, this Court refused petitioner's petition for appeal. Petitioner subsequently filed suit in the United States District Court for the Northern District of West Virginia against Judge Henry, Mr. Savasten and Mr. Savasten's two attorneys, Claudia Bentley and Richard L. Douglas, alleging that they conspired against her to violate her constitutional rights. This action was dismissed, which dismissal was affirmed by the United States Court of Appeals for the Fourth Circuit.

awarding Mr. Aschmann $7,000 in unpaid legal fees. In its order of March 4, 1988, the district court denied petitioner's motions, clearly stating that it "is bound to give to the prior state court judgment the same preclusive effect which it would receive in the courts of Virginia [,]" and that it "do[es] not have subject matter jurisdiction to review the final judgments or decisions of state courts." Petitioner filed a "petition for rehearing" in the United States Court of Appeals for the Fourth Circuit, which petition was denied by order of August 19, 1988.

Not to be discouraged by these failed court actions, petitioner then instituted a lawsuit in the United States District Court for the West District of Virginia against the following defendants, alleging inter alia, that they had all conspired to deny her the constitutional right to a trial by jury in all of her prior claims: five of the six defendants in the original probate action in Winchester, Virginia, the presiding judge, the clerk of the court, and the four attorneys who participated therein, including Mr. Aschmann; Judge Donald Kent, who ordered petitioner to pay Mr. Aschmann $7,000 in unpaid legal fees, as well as the two attorneys who participated in the unpaid legal fees case; the Honorable Albert V. Bryan, Jr. of the United States District Court for the Eastern District of Virginia, who presided over and dismissed petitioner's previous action against Judge Kent, as well as both the clerk of that court and counsel for one of the defendant attorney's in that action. Petitioner also named as defendants Judge Patrick Henry of the Circuit Court of Morgan County, who presided over the litigation concerning attorney David Savasten, see n. 3, supra, and who accorded full faith and credit to the $7,000 judgment awarded Mr.

Aschmann. Petitioner further named as defendants the Honorable William Kidd of the United States District Court for the Northern District of West Virginia who dismissed petitioner's previous action against attorneys Savasten, Bentley and Douglas, see n. 3, supra, as well as the Honorable Richard Williams of the United States District Court for the Eastern District of Virginia, who likewise dismissed petitioner's action against Mr. Aschmann.[4] Finally, petitioner named as defendants attorneys Clarence E. Martin, III and Daniel T. Booth[5] for their participation in both entering Mr. Aschmann's $7,000 judgment for nonpayment of legal fees in Morgan County Circuit Court and her action against Mr. Aschmann before Judge Williams.

By order of January 14, 1993, the Honorable B. Waugh Crigler, United States Magistrate Judge, recommended dismissal of all petitioner's claims against all of the named defendants.[6] By subsequent order, entered July

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[4] This action was originally brought in the United States District Court for the Northern District of West Virginia but was transferred to the Eastern District of Virginia.

[5] Mr. Booth is a respondent herein. See discussion, infra.

[6] In its January 14, 1993 order, the court found it necessary to fully articulate the reasons for its dismissal of petitioner's claims in the hope that, "[i]f this action does anything, ... it will bring to [petitioner's] attention the proposition that the right to a trial by jury in a civil case, under the Constitution of United States, is a qualified right, not an absolute one." (footnote omitted).

27, 1993, Magistrate Judge Crigler, upon determining that petitioner "has engaged in litigation that is frivolous, unnecessary, vexatious, and oppressive to all defendants in this case[,]" recommended that monetary sanctions of approximately $42,378.77 be levied against her pursuant to Rule 11 of the Federal Rules of Civil Procedure. Magistrate Judge Crigler further recommended that petitioner be enjoined "from filing, instituting, continuing or prosecuting any civil action in this or in any other federal court without first obtaining leave of this court . . . In no way, however, should this Order be construed as prohibiting [petitioner] from pursuing any direct appeal of the decisions by this court or by the Fourth Circuit Court of Appeals in this case[.]" Magistrate Judge Crigler's recommendations were adopted by orders entered by the Honorable James H. Michael, Jr., Judge of the United States District Court for the Western District of Virginia. On appeal, the United States Court of Appeals for the Fourth Circuit affirmed both of these orders.

During the pendency of the above proceeding, petitioner instituted another action in the Circuit Court of Berkeley County, West Virginia, seeking to vacate the $7,000 judgment previously entered against her in the Circuit Court of Morgan County and to vacate "the lien thereinafter entered . . .for the unsatisfied amount of said judgment." Named as defendants were the Honorable Christopher Wilkes, who entered an order permitting the sale of petitioner's home to satisfy the $7,000 judgment, and Clarence E. Martin, III and Daniel T. Booth, attorneys who participated in prior proceedings concerning that judgment. Finding, inter alia, that petitioner's motion "constitutes a collateral attack on a final judgment of a court of competent

jurisdiction[,]" Judge Donald C. Hott[7] denied petitioner's motion by order entered October 28, 1993. Petitioner's petition for appeal of this order was refused by this Court on April 6, 1994.

Upon motion by Mr. Martin and Mr. Booth, Judge Hott permanently enjoined petitioner "from instituting in any court of this State any action at law or in equity [against them] based in whole, in part, or in any manner whatsoever upon allegations that the judgment of the Circuit Court for the City of Alexandria, Virginia . . . is in any manner void, voidable or otherwise invalid[.]" Judge Hott reasoned that,

> [b]ased upon . . . [petitioner's] pattern of abusive and oppressive litigation, it may anticipated that [petitioner] will accept neither the judgment of the United States District Court for the Western District of Virginia nor the judgment of the Circuit Court for Berkeley County, West Virginia as final, valid, binding and dispositive of her claims against the Plaintiffs herein, but is likely in the future to embroil the Plaintiffs in further repetitious and frivolous litigation predicated upon her unfounded contention that the judgments of the Circuit Court for the City of Alexandria and the Circuit Court for Morgan County in the respective cases of Aschmann v. McMahon are invalid and

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[7] Judge Hott is a respondent herein. See discussion, infra.

that the Plaintiffs' actions in obtaining or enforcing said judgments are tortious in nature.

By subsequent order entered January 13, 1994, Judge Hott further imposed sanctions against petitioner, pursuant to Rule of the West Virginia Rules of Civil Procedure, in the amount of $6,210.01.

In the meantime, petitioner was engaged in proceedings with the Morgan County Fire Board, a respondent herein, relating to her refusal to pay county fire fees. The Fire Board placed a lien upon her home for the amount of fees owed, which amount was settled from the proceeds of the sale of petitioner's home upon foreclosure.

In amended complaint[8] filed in the Circuit Court of Morgan County on March 1, 1996, petitioner instituted the underlying civil action in this case, naming as defendants John P. Adams, the Honorable Donald C. Hott,[9] Glen Stotler, Donald Sharp, Martin & Seibert, L.C., Daniel T. Booth, Susan Snowden, Paul Weiss, the Morgan County Fire Board and Howard Trittipoe. In that complaint, petitioner again sought, inter alia, to collaterally attack the $7,000 judgment

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[8] Petitioner's original complaint was filed August 8, 1995.

[9] Judge Hott was apparently named as a defendant because he dismissed petitioner's most recent lawsuit, issued a permanent injunction against her and made various rulings against her in the proceedings with the Morgan County Fire Board.

for nonpayment of legal fees on the ground that she was denied her constitutional right to a trial by jury.[10]

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[10] In her amended complaint, petitioner alleged, inter alia:

> Defendants Hott, Martin & Seibert and their attorneys are using any means to enforce a Virginia Judgment that is void (per applicable laws) on its face. Said judgment clearly shows no jury made the decision...that it was a discretional judgment by the court...such discretion was not afforded said court with compliance to Constitutions a jurisdictional requirement. He abused his power to rule against the overwhelming evidence in favor of this Plaintiff...in short, Aschmann was paid $1878.36 to write a complaint he never was able to get a court to accept...it had to be amended by another attorney subsequently. It is a matter of record and a one page affidavit by local attorney (hereto attached) substantiates a part of the above. Plaintiff was denied completion of the court by that Alexandria court, denied due process and Court abused his power. Defendants Hott and two of Martin & Seibert Attorneys, Weiss & Snowden perpetrated the denial of trial by jury and other acts that violate WV Const. Art. 3, 17 and 3, 10, as well as those of the United States Constitution, Amendments One, Five, Seven and Fourteen on August 9, 1993[.]

Speaking to plaintiff, Defendant Hott admits on page 34 (transcript) 'You have not got it to trial yet'...which appears to ordinary persons, to be bragging of his power to deny jury trial (in reality to do so violates his own oath of office) and is at the least disrespectful and destructive to the Constitutions he has sworn to uphold and support; he is also ambiguous possibly, when he admits recognition of same by telling Plaintiff 'You are reading the Constitution' (thus he must know Alexandria, Virginia Judgment to be void) but goes on to say 'I have never been a constitutional lawyer, I just work out of the Code of West Virginia; that is about all I can comprehend.' The end result was an injunction to keep this Plaintiff out of court on these matters, which was another abuse of power and process since the courts are open to all.

...

This Plaintiff has never submitted a hand written pleading in any of these matters. Per the above and the Constitutions that support her actions (as well as stare decisis) she is loyal enough to the Constitutions to fight for their survival but that does not make her psychotic (nor does she misrepresent ... lie or fail to know what court she is in, as two defendants herein did) she is upset emotionally that SOME judicial officers seem determined to destroy the very foundation of our judicial

The court appointed Dr. Bradley Soule to examine petitioner and to report his findings back to the court. The circuit court instructed Dr. Soule "that it requires no general finding of [petitioner's] general competency. Rather, Dr. Soule[11]

> system...she does love justice which has not been forthcoming to her YET[.]
>
> There is no cause or reason to question the general sanity or mental competency of [petitioner].
>
> However, the Court has substantial concern with regard to [petitioner's] mental ability to rationally comprehend and accept matters relating to the present litigation and litigation that has preceded it in other cases, both here and in other venues as reflected by the pleadings and papers filed herein.
>
> Accordingly, the Court finds that good cause has been shown for the appointment of a competent psychiatrist to examine [petitioner's] ability to proceed with the present action in her own right or whether a guardian ad litem should be appointed.

[11] Upon Dr. Soule's subsequent refusal to perform the requested examination, the circuit court appointed another

should limit his evaluation and report to the question of whether [petitioner] is competent to act responsibly with regard to this and other civil actions in which she has been involved and whether the appointment of a Guardian ad litem would be in [petitioner's] best interest."

The circuit court further ordered the appointed psychiatrist to "report back to Court within 30 days of the date of this order his findings as to the concerns of the Court heretofore stated. Concomitantly therewith, Dr. Soule shall transmit a coy of this report to all parties hereto. Should Dr. Soule fail to do so the Clerk of the Court is authorized and ordered to provide a copy of Dr. Soule's report to any party hereto requesting same."

It is the enforcement of this order[12] that petitioner seeks to prohibit.[13]

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psychiatrist, Dr. Raymond Shapiro. The order appointed Dr. Shapiro has, to date, not been signed or entered.

[12] Also in its April 8, 1996 order, the circuit court ordered a stay of the underlying civil action until such time as the appointed psychiatrist has reported to the court. Petitioner immediately filed a petition for a writ of prohibition with this Court and, by order of May 16, 1996, this Court issued a rule to show cause. Oral arguments on the matter were heard on September 25, 1996.

[13] Subsequent to the filing of this petition for writ of prohibition, this Court, by order of October 21, 1996, refused yet another petition for appeal filed by petitioner. By order

II.

In Syllabus Point 2 of State ex rel. Reed v. Douglass, 189 W. Va. 56, 427 S.E.2d 751 (1993), we reiterated that which is necessary for this Court to grant a writ of prohibition:

> " 'A writ of prohibition will lie where the trial court does not have jurisdiction or, having jurisdiction, exceeds its legitimate powers." Syllabus Point 3, State ex rel. McCartney v. Nuzum, 161 W. Va. 740, 248 S.E.2d 318 (1978).' Syllabus Point 4, Pries v. Watt, 186 W. Va. 49, 410 S.E.2d 285 (1991).

Furthermore, in Syllabus Point 4 of State ex rel. Hoover v. Berger, _____ W. Va. ___, ___ S.E.2d ___ (Nov. 15, 1996), this Court held:

> In determining whether to entertain and issue the writ of prohibition for cases not involving an absence of jurisdiction but only where it is

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of September 15, 1995, the Morgan County Circuit Court granted Mr. Aschmann's motion for summary judgment in his ejectment action against petitioner. Mr. Aschmann had purchased petitioner's home when it was sold to satisfy the $7,000 judgment for unpaid legal fees. The circuit court's September 15, 1995, order ordered petitioner to vacate her former residence.

claimed that the lower tribunal exceeded its legitimate powers, this Court will examine five factors: (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression. These factors are general guidelines that serve as a useful starting point for determining whether a discretionary writ of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight.

III.

As previously indicated, respondents filed a motion with the circuit court to determine petitioner's mental competency to

proceed with the pending civil action instituted by her and to, thereafter, determine if a guardian ad litem should be appointed to protect her interests therein. It is respondents' contention that the circuit court's authority to order petitioner to undergo a psychiatric examination so as to determine her mental ability to rationally comprehend and accept matters relating to the present litigation and litigation that has preceded it is derived from West Virginia Rule of Civil Procedure 17 (c).

West Virginia Rule of Civil Procedure 17 (c)[14] authorizes a court to, inter alia, appoint a guardian ad litem for an incompetent person not otherwise represented in an action:

Infants, incompetent persons, or convicts.

> Whenever an infant, incompetent person, or convict ha[s] a duly qualified representative, such as a guardian, curator, committee or other like fiduciary, such representative may sue or defend on behalf of the infant,

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[14] W. Va. R. Civ. P. 17 (c) is substantially similar to Fed R. Civ. P. 17 (c). We therefore give due consideration to federal cases interpreting the latter in determining the meaning and scope of our rules. State v. McGinnis, 193 W. Va. 147, 158 n.14, 455 S.E.2d 516, 527 n.14 (1994); Painter v. Peavy, 192 W. Va. 189, 192 n.6, 451 S.E.2d 755, 758 n.6 (1994).

> incompetent person, or convict. If a person under any disability does not have a duly qualified representative he may sue by his next friend. The court or clerk[15] shall appoint a discreet and competent attorney at law as guardian ad litem for an infant, incompetent person, or convict not otherwise represented in an action, or the court shall make such other order as it deems proper for the protection of any person under disability.

Id. (emphasis and footnote added).

The purpose of "appointing a guardian ad litem is to protect the person under disability." Jackson General Hospital v. Davis, 195 W. Va. 74, 77 464 S.E.2d 593, 596 (1995). Indeed,

> courts should 'appoint guardians ad litem for parties litigant when reasonably convinced

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[15] Though W. Va. R. Civ. P. 17(c) permits the clerk to appoint a guardian ad litem, its federal counterpart contains no such provision. See Marlyn Lugar and Lee Silverstein, West Virginia Rules of Civil Procedure, p. 162-63 (1960), for a discussion of the difference between the West Virginia and the federal rule and the reason the West Virginia rule includes the clerk within its provision.

> that a party litigant is not competent, understandingly and intelligently, to comprehend the significance of legal proceedings and the effect and relationship of such proceedings in terms of the best interests of such party litigant.'

Buckler v. Buckler, 195 . Va. 705, 708, 466 S.E.2d 556, 559 (1995) (quoting Graham v. Graham, 240 P.2d 564, 569 (Wash. 1952).

A court's "power to appoint a guardian ad litem [under Rule 17 (c)] 'has been broadly interpreted and has not been limited by a narrow construction of the words "infant" or "incompetent" person.' Wright & Miller, Federal Practice & Procedure, Sec. 1570 at 776 (1971)." Cyntje v. Government of the Virgin Islands, 95 F.R.D. 430, 432 (D.C.V.I. 1982), aff'd, 782 F2d 1027 (3d Cir.1985). See N.O. v. Callahan, 110 F.R.D. 637, 649 (D.Mass.1986); Heubner v. Ochberg, 87 F.R.D.449, 456 (E.D.Mich 1980). A party who has not been adjudicated incompetent may, nevertheless, lack the mental capacity to participate in a matter before the court. In such an instance, under Rule 17 (c), a court may appoint a guardian ad litem to protect the interests of such party litigant.[16] See Helton v. Helton, 362 So.2d 257, 259

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[16] We emphasize that this petitioner has not been adjudicated incompetent and that the circuit court, in its April 8, 1996 order, expressly stated that its concern was with regard to petitioner's "ability to proceed with the present action" and

(Ala.Ct.App.1978); People In Interest of M.M., 726 P.2d 1108, 1119 (Colo.1986); Callahan, 110 F.R.D. at 649; Cyntje, 95 F.R.D. at 432, 433; Matter of S.W., 385 A.2d 315, 317 (N.J.Ct.App.1978); Bodnar v. Bodnar, 441F.2d 1103, 1104, cert. Denied, 404 U.S. 913 (1971). See also Buckler, 195 W. Va. At 708, 466 S.E.2d at 559 (without reference to Rule 17 (c), guardian ad litem appointed where adult party to divorce proceeding had not been adjudicated incompetent but had been "acting in a manner potentially adverse to her interests."); Adoption of Kirk, 623 N.E.2d 492, 495 (Mass.Ct.App.1993), review denied, 629 N.E.2d 1004 (1994)

"[t]hat there is no cause or reason to question [her] general sanity or mental competency[.]" Indeed, "a declaration of incompetency and the resulting appointment of a committee, guardian or conservator to oversee an individual's affairs may affect [petitioner's] constitutionally-guaranteed liberty interest[s]." State ex rel. Shamblin v. Collier, 191 W. Va. 349, 352, 445 S.E.2d 736, 739 (1994), and would implicate Chapter 44A of the West Virginia Code, "West Virginia Guardianship and Conservatorship Act," and its legislatively-derived procedures to determine a person's competency. See e.g., W. Va. Code, 44A-2-1, et seq. We do not address, in this case, those situations in which a party is either "under an existing guardianship or has otherwise been judicially found to be incompetent." Thomas v. Humfield, 916 F.2d 1032, 1033 n.1 (5th Cir.1990), aff'd., 32 F.3d566 (1994), cert. Denied, 115 S.Ct.1138 (1995).

("An individual may be competent for one purpose but not for another.")[17]

When a substantial question exists regarding the mental competency of a party, a court must determine whether the party is or is not competent to proceed with the action before it. See Krain v. Smallwood, 880 F.2d 1119, 1121 (9th Cir. 1989) aff'd. 931 F.2d 60 (1991). Only then will the court be able to determine if a guardian ad litem should be appointed under Rule 17 (c). See Id.

In Cyntje, supra, the court determined that .

> [w]hen the competency of a party is raised, a court may require that party to submit to a psychiatric examination, so that the court may have medical facts on which its decision on the necessity of appointing a guardian ad litem can be based.
>
> 'The Court, as a layman cannot judge the plaintiff's mental stability. It is appropriate that the court be furnished up-to-date information concerning the plaintiff's present mental condition, both in order to

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[17] Cf. Syl. Pt. 3, In Matter of Lindsey C., ___ W.Va.____, 473 S.E.2d 110 (1995) ("In abuse and neglect proceedings the appointment of a guardian ad litem is required for adult respondents who are involuntarily hospitalized for mental illness, whether or not such adult respondents have also been adjudicated incompetent.")

> consider the many facets of the trial and the proposed relief, and to avoid any risk of finding that the time required for pretrial proceedings and trial might prove futile.'[18]

(footnote added). Id. 95 F.R.D. at 432 (quoting Swift v. Swift, 64 F.R.D. 440, 442 (E.D.N.Y.1974). See Bodnar, 441 F.2d at 1104 (a court "is not powerless to ascertain whether a litigant is competent. . . Where there is a showing of a substantial question of competency, the Judge with protective restrictions can, in making that determination, require a medical examination.")

In Cyntje, not unlike the present case, the court was given good cause to question plaintiff's mental competency "not only because of the nature and substance of [his] complaints, but also because they [were] so numerous and, in substance, alike." Id F.R.D. at 432. Of the eleven complaints filed by the plaintiff in that case, nine arose out of his allegations that the government of the Virgin Islands -

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[18] Compare Helton, 362 So.2d at 259, in which the court indicated that in some cases, "it is sufficient that the trial court is apprised of the possibility that a party is incompetent by the pleadings or otherwise. Such notice enables the court to appoint a guardian ad litem to protect the alleged incompetent's interests." Thus, based upon evidence of the party's mental incompetence introduced below, "the trial court could have properly concluded – without an additional mental examination – that the [party] was mentally incompetent and that the appointment of a guardian ad litem was necessary to protect his interests." Id.

illegally denied him permission to operate an express bus service on the islands of St. Thomas and St. John. Id. The plaintiff sued various government officials, some more than once, as well as individuals who were, in some way, connected to the processing of his complaints. Id., 95 F.R.D. at 433.

The court in Cyntje, upon finding plaintiff's "mental competency to file and prosecute court actions on his own behalf [to be] subject to question[,]" scheduled a hearing in order to question plaintiff regarding the substance of his complaints and to "afford the court an opportunity to observe [his] behavior and lucidity." Id., 95 F.R.D. at 433. The court concluded that, thereafter, if it determines that plaintiff's mental competency remains at issue, then it would appoint a psychiatrist to conduct a mental examination. Id.

We find that under W. V. R. Civ. P. 17 (c), whenever an infant, incompetent person, or convict has a duly qualified representative, such as a guardian, curator, committee or other like fiduciary, such representative may sue or defend on behalf of the infant, incompetent person, or convict. If a person under any disability does not have a duly qualified representative he may sue by his next friend. The court shall appoint a discreet and competent attorney at law as guardian ad litem for an infant, incompetent person, or convict not otherwise represented in an action, or the court shall make such other order as it deems proper for the protection of any person under disability.

Where a substantial question exists regarding the mental competency of a party not otherwise represented to proceed with the litigation presently before the court, the

court may, where there is good cause shown, require the party to undergo a mental examination in order to determine whether a guardian ad litem should be appointed to protect the party's interests pursuant to West Virginia Rule of Civil Procedure 17 (c).

In this case, the circuit court found there to be good cause shown for appointment of a competent psychiatrist to examine petitioner to ascertain her capacity to understand the meaning and effect of the litigation she has instituted. See Donnelly v. Parker, 486 F.2d 402, 407 (D.C.Cir.1973). We agree.

The circuit court had before it numerous pleadings in which petitioner accused various defendants of conspiring to deprive her of her constitutional right to a trial by jury with regard to the $7,000 judgment against her for unpaid legal fees. Petitioner has sued federal and circuit court judges, lawyers and clerks of court, some more than once, who have had some connection to her lawsuits. Petitioner vehemently insists that they are all participants in the constitutional conspiracy against her.

Petitioner's litigious behavior has cost her home, which was sold to satisfy the $7,000 judgment and from which she now faces ejectment. Moreover, her perceived deprivation of her right to due process has also resulted in monetary sanctions in excess of $50,000.

It is clear to this Court that petitioner either refuses to accept or is unable to understand the meaning and effect of the legal proceedings she has instituted. We find that a substantial question exists regarding petitioner's mental

competency to proceed with the litigation she has instituted in the Circuit Court of Morgan County and that good cause was shown to warrant the circuit court's April 8, 1996, order requiring petitioner to undergo a mental examination in order to determine whether a guardian ad litem should be appointed to protect her interests pursuant to Rule 17 (c).

IV.

As indicated above, the circuit court's April 8, 1996, order directs the appointed psychiatrist, following examination of petitioner, to

> report back to the Court within 30 days of the date of this order his findings as the concerns of the Court heretofore stated. Concomitantly therewith, [the appointed psychiatrist] shall transmit a copy of this report to all parties hereto. Should [the appointed psychiatrist] fail to do so the Clerk of the Court is authorized and ordered to provide a copy of [the] report to any party hereto requesting same.

In Syllabus Point 1 of State v. Simmons, 172 W. Va. 590, 309 S.E.2d 89 (1983), this Court held: "W. Va. Code, 27-3-1(a), provides for confidentiality of communications and information obtained in the course of treatment and evaluation of persons who may have mental or emotional conditions or disorders, subject to the exceptions set out in W. Va. Code, 27-3-1(b)."

W. Va. Code, 27-3-1(a) [1977] expressly provides that "[c]ommunications and information obtained in the course of treatment or evaluation of any client or patient shall

be deemed to be 'confidential information[.]" Id., in relevant part.

W. Va. Code, 27-3-1(b)(3) [1977], one of the exceptions to the confidentiality provision of W. Va. Code, 27-3-1(a) [1977], provides that such confidential information may be disclosed "[p]ursuant to an order of any court based upon a finding that said information is sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining the confidentiality established by this section[.]"

The public policy underlying the nondisclosure of such confidential information "is to enhance communications and effective treatment and diagnosis by protecting the patient/client from the embarrassment and humiliation that might be caused by the disclosure of information imparted during the course of consultation." Syl. Pt. 2, in relevant part, State v. Roy, 194 W.Va. 276, 460 S.E.2d 277 (1995).

Clearly, the appointed psychiatrist's report of petitioner's mental examination will be critical to the circuit court's determination of whether a guardian ad litem should be appointed to protect petitioner's interests in the underlying litigation. Thus, it is necessary that the circuit court receive a copy of the psychiatrist's report.

It was, therefore, error for the circuit court to order the appointed psychiatrist to transmit copies of his report of petitioner's mental examination to all parties in the first instance.

V.

For the reasons discussed above, Petitiner's petition for a writ of prohibition is granted as moulded. The case shall proceed below in accordance with the principles set forth in this opinion.

Writ granted as moulded.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

CHARLES G. ASCHMANN, JR.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**At Law No. 10607**
	)	
MARIE M. McMAHON,	)	
BART WHIRLEY and	)	
ALICE WHIRLEY,	)	
	)	
Defendants.	)	

FINAL ORDER

THIS MATTER came before the Court for trial on the merits on January 5, 1987, with all parties present with their counsel exept for Mrs. Marie McMahon, who appeared pro se.

Whereupon, a jury of eleven was called and voir dired by the Court and counsel and thereafter the parties exercised their preemptory strikes and the remaining five jurors were put upon their oaths to well and truly try the issues joined in this case.

Thereafter, plaintiff Aschmann presented evidence in support of his claim and rested his case. The defendant and

counter-claimant, Marie McMahon, presented her case as did the defendants Alice and Bart Whirley. Plaintiff then presented rebuttal evidence.

At the close of the evidence plaintiff Aschmann made a motion for summary judgment and directed verdict against defendant McMahon and further made a motion to strike the evidence on Mrs. McMahon's counterclaim. Argument was had on these motions.

The Court being of the opinion that plaintiff's motion for directed verdict against defendant McMahon and plaintiff's motion trike McMahon's counterclaim should be granted, these motions were granted.

Thereafter, plaintiff moved for voluntary nonsuit against the defendants Alice and Bart Whirley, which motion was granted.

IT APPEARING TO THE COURT that judgment should be entered in accordance with the Court's ruling; it is

ADJUDGED AND ORDERED that the defendant McMahon's counterclaim be and the same hereby is, dismissed with prejudice and the defendant McMahon shall recover nothing on her counterclaim; it is

FURTHER ADJUDGED AND ORDERED that this case be dismissed without prejudice as against the defendants Alice and Bart Whirley.

AND THIS ORDER IS FINAL.

ENTERED: 2-9-87

S/ Donald M. Kent
DONALD M. KENT
Judge

Seen:

S/ John M. Johnston
John M. Johnston
Counsel for Charles G. Aschmann Jr.

S/ Donald L. Bowman
Counsel for Alice and Bart Whirley

Seen and Excepted To:

S/ Marie M. McMahon, pro se
Marie M. McMahon
Pro Se

A COPY TEST:
Edward S(illegible), Clerk

By (signed but illegible), Deputy Clerk

AFFIDAVIT

STATE OF WEST VIRGINIA
COUNTY OF MORGAN, to-wit:

I, DAVID H. SAVASTEN, being first duly sworn, depose and say

1. That I am a practicing attorney in Berkeley Springs, West Virginia and also licensed to practice in Virginia.

2. That in 1984, I filed a Civil Action No. 84-L-89, Whirley v. Farmers and Merchants National Bank, et al., which Charles G. Aschmann, Jr., an Alexandria, Virginia, Attorney, later took over from me, as sole counsel, refusing to associate with me in the matter.

3. Mr. Aschmann was subsequently dismissed by his clients. He had not done any discovery for his clients in preparation for trial, nor had he answered discovery for the opposition.

4. Following a non-suit of 84-L-89, I filed the matter again as Case No. 85-L-142 months later. Mr. Aschmann never did submit any complaint that, in its entirety, was acceptable to the Court.

5. That Marie McMahon, being a Certified Paralegal, had personal knowledge that discovery was necessary preparation for any trial, and further, she was involved and knew the facts much better than her Principals, the Whirleys, who gave her general power or attorney. She and I ultimately did discovery together. Most of the above herein should be a matter of record.

S/ David H. Savasten
David H. Savasten

Taken, sworn to and subscribed before me this 30th day of May, 1995.

S/ Ralph N. Shambaugh
Notary

Stamp:
Official Seal
Notary Public, State of West Virginia
RALPH N. SHAMBAUGH
Court House, Berkeley Springs, WV 25411
My Commission Expires January 7, 1997

MARIE M. McMAHON, PARA-LEGAL
103 PRATT STREET
BERKELEY SPRINGS, WEST VIRGINIA 25411
(304) 258-1117

January 13, 1997

Stamped:
Received & Filed in the office of the
Clerk of the Circuit Court of Morgan
County, WV on 1/13/97
Time 11:40 a.m.
JLC, DeputyClerk

Honorable Thomas McHugh, Chief Justice
West Virginia Supreme Court of Appeals
State Capitol, Room 318 East Wing
Charleston, WV 25305

Re: Jurisdiction/Due Process/
Constitutions/judicial system

Dear Mr. Chief Justice:

It is sincerely hoped that you will recognize and appreciate what has been written in the attached letter to Mr. Hamilton (Ret.J) by me for exactly what it is. My cases have always been about the constitutions we are all supposed to uphold and support, not about money. If that has been the interest of the unconstitutional acts by judicial officers, that is their problem, not mine_I do know and can legally prove there has

been non-judicial acts_lack of due process and violations of oaths of office, by those that had the duty-owed responsibility to act in accord with constitutions and stare decisis.

Please read and seek the advice (if necessary) of your fellow justices, concerning the enclosed and the matters involved/laws applicable. I submit you have a duty to do so in your position_to the constitutions_former decisions by this court_to the public that concerns themselves with your decisions, and last but not least, to yourself.

I beg you not to get angry, but please realize what my effort is trying to accomplish. I am seeking this with all due respect due this court (or any court) but your responsibility is greater because of your power to correct such (and also your duty to correct it) per some of my consultants, and I agree with that. The "bad apples" 16 in all counting the two states involved (judges/magistrates) as opposed to three (3) judges (both states) "good apples" (constitutional courts) are not good odds. In our state it is ten (10) to two (2) counting both federal and state, magistrates/judges in two of my cases (the "Fire Fee" and Aschmann illegal fees cases) only. The constitutional judges are the Honorable Thomas Steptoe and Robert Maxwell and they deserve much praise for doing their duty in the face of such "bad apples" and the lawyers that have been involved_especially the Honorable Steptoe, whom the bank could not buy in the Aschmann Case. Of course, it would be simple to have the Circuit Courts seek disbar of any lawyers that ask them to violate constitutions_that may stop it, and I have been told that such is certainly grounds, by

a few lawyers_However, all constitutionally acting judicial officer deserve (and get from me) the highest praise and respect, even love.

Sincerely,

S/ Marie M. McMahon

cc: files

encl: 1/11/97 ltr/attach
Mr. Hamilton

MARIE M. McMAHON, PARA-LEGAL
103 PRATT STREET
BERKELEY SPRINGS, WEST VIRGINIA 25411
(304) 258-1117

January 11, 1997

Stamped:
Received and Filed
of the Clerk of the
Circuit Court of
Morgan County,
WV on 1-13-97
Time 11:40 a.m.
JLC, Deputy Clerk

P.S. I realize I am repeating, but it seems necessary in order to get the the message across.

Re: Your letter of January 4, 1997, McMahon v. Adams, et al
Morgan Co. 95-C-37

Dear Mr. Hamilton:

Thank you for a copy of your above referenced letter.

After analyzing the facts and laws applicable, it is my position that neither the West Virginia Supreme Court (in toto) nor the United States Supreme Court has the power to give you a mandate to act in, or preside in, the above referenced matter, or any other wherein I am a party. WHY?

Mandate is described in Black's as "A command, order, or direction, written or oral, which court is authorized to give and person is bound to obey"_(cite omitted)_"A judicial command or precept proceeding from a court or judicial

officer, directing the proper officer to enforce a judgment, sentence, or decree." (again cites omitted).

The operative word here is "proper officer". According to Article 6, U.S. Constitution, each judicial officer is "bound" thereby (please read attached). Please note that_all_judicial officers shall be bound by Oath or Affirmation to support this Constitution_and_Judges in every State shall be bound thereby_This is, and has been, the problem all along. The judges wanted to rule contrary to constitutions, other statutes and decisions made in support thereof, by supreme courts, both federal and state. The supremacy clause of the United States Constitution does not allow such contrary acts to, and destruction of, our constitutions. One U.S. Sup. Ct. Ch. Justice said, speaking for a unanimous Court_ "The Constitution itself becomes a solemn mockery" in speaking of violations of Oaths of Office. United States v. Peters (3 L Ed 53). Courts derive their power to act from the constitutions and/or statutes. No court has the power to grant jurisdiction to another where there is evidence (documented) that said (any) has violated his individual oath of office. Such has been done time after time in my cases. The Founding Fathers/Congress KNEW WHAT THEY WERE DOING WHEN THESE LAWS WERE WRITTEN, TO PROTECT THE PEOPLE FROM SUCH ABUSIVE, ILLEGAL OFFICIALS/PUBLIC SERVANTS. This is why the original Virginia judgments are VOID. When judges commit a crime against the public in violation of Art. 6 and their oaths, they do not subsequently have the power to give out their judgments, they are back as they were before taking their oaths, only now, they, too, are subject to either civil, or

criminal, prosecution and the United States Supreme Court has so ruled, as have other appeals courts. Withall due respect due the bench, such court no longer has jurisdiction_nor can it be given by any other higher court, to such court, so speaks stare decisis, by which we are all supposed to be bound.

Page 2, letter to Mr. Hamilton, dated January 11, 1997.

If you have read my research you know the above is true, as I have been trying to tell my opponents for years. My love for justice and desire for a better judiciary will not allow me to do otherwise. As I told the West Virginia Supreme Court on September 25, 1996, when I appeared before them, "I feel that I am on solid ground when I have the support of the Constitutions and former constitutional decisions of both the United States and the Supreme Courts of Virginia and West Virginia" (and a few others) on my side as stare decisis, in certain instances_my opponents can make no such claim truthfully, and the black ball gets bigger and bigger.

In addition to compliance with constitution being jurisdictional as above shown, Mr. Justice Stevens, with dicta, in Daniels v. Williams, gave us all a lesson in Fourteenth Amendment Rights, where he stated that if the violation is one of the specific rights guaranteed in the Bill of Rights, the Plaintiff may invoke Section 1983 (42 USC) for remedy, regardless of any state remedy. Additionally, there are cases after cases thereunder that state it is not necessary to exhaust state remedies before seeking remedy under Section 1983. Therefore, I was not required to appeal the no

jurisdiction/lack of Due Process judgments of either (former) judges Kent and/or Snead. By violating their respective oaths of office, they no longer had the power to grant their unconstitutional, abusive, illegal judgments as written_so says the above cited laws and courts in agreement with Art. 6. However, I have been denied time after time by subsequent courts who upheld both Kent/Snead. WHY. Plaintiff does not have to prove their motives. In almost all instances, these courts ruled against the overwhelming evidence on the side of this Plaintiff_documented evidence I had gathered as "best evidence" which said courts did not want the jury to see, so they usurped the jury function, which they had no power to do_abused their power. Therefore each time such happened, this Plaintiff has cause for action against those people as well as the lawyers who asked them to be illegal, thereby themselves acting against their own individual oaths of office and duty-owed responsibilities to the judiciary and public, same as the courts.

These judicial officers have no discretion_the word shall is mandatory_There is the mandate, given by constitutions, and laws made in pursuance therewith_no court can change that, nor do they have the power to take away the power of the United States Constitution. I feel sure the present United States Supreme Court will agree with the precedents_it is not what Marie McMahon says (as has been suggested by the opposition). I am only quoting the Supreme Courts herein, and elsewhere. Please take judicial notice of same.

One other fact, please. No place could I find that seeking U.S. Constitutional Rights in any trial court, after being denied same by a court without jurisdiction (per above cites) and Due Process (per above cites) precludes me (or any other plaintiff) the right to try to find a constitutional court who will grant due process; when new defendants can be added per the applicable laws, etc. Additionally, this was (is) a fundamental right, also, per our own W.Va. Sup. Ct., the self-representation (see attached) NOR IS EITHER "JUST CAUSE" FOR A MENTAL EXAMINATION (UNDER RULE 35, not 17) OF THIS PLAINTIFF, OR ANY OTHER. Please analyze, think and take judicial notice of facts and laws.

Sincerely,

S/ Marie M: McMahon

cc: all interested parties

the Ch. Justices and

possible others.

IN THE CIRCUIT COURT OF MORGAN COUNTY, WEST VIRGINIA

MARIE M. MCMAHON,

Plaintiff/Petitioner,

vs. **Civil Action No. 95-C-37**

John M. Hamilton, Retired Judge, Presiding,

Respondent.

Stamped:
Received & Filed in the Office of the Clerk of the Circuit Court of Morgan County, WV on 2-6-97 Time 4:15 p.m. JLC, Deputy Clerk

MOTION TO DISQUALIFY

COMES NOW the Plaintiff/Petitioner, Marie M. McMahon, pro se, pursuant to Rule XVII (Trial Court Rules) 1997, to motion the Respondent, John M. Hamilton, appointed by West Virginia Supreme Court, originally, to preside herein, to disqualify and/or recuse himself from any further action in the above cited matter. Plaintiff/petitioner offers her grounds therefor as follows:

1. Respondent cannot have jurisdiction in the matter because of his own conduct on April 8,

1996: He, by Order ,violated Plaintiff/Petitioner's fundamental civil rights with said order.

2. Respondent by his own admission, and per the records, did not know the facts before making such judgment, concerning this Plaintiff/Petitioner's fundamental right to self-representation.

3. Respondent's action shows that he has no respect for, and does not concur, in Article 6, United States Constitution and/or West Virginia Constitution's provision that courts are open to all and a trial by jury, if demanded, where the amount exceeds Twenty Dollars ($20.00), is a jursidictional requirement; nor does he appear to be familiar with the United States Bill of Rights and/or Fourteenth Amendment of the U. S. Constitution.

4. Further, citing previous constitutional decisions of West Virginia Supreme Court and United States Supreme Court had no influence on his illegal decision to order without "just cause" being shown for a mental examination of Plaintiff/Petitioner, as is provided by Rule 35 (Not 17).

5. It is clear that non-judicial decision (ex parte) had been reached prior to the April 8, 1996, ruling/order, with Martin & Seibert as counsel (not Steptoe & Johnson's counsel, Lucien Lewin) to have Respondent make such Order on April 8, 1996, when the hearing was held, because of the conduct of the parties when Plaintiff/Petitioner,

who had anticipated such action by Martin & Seibert's attorneys, came into the hearing prepared to submit written statements (1) from a local doctor and (2) from a staff out-patient psychiatrist at Walter Reed Army Medical Center, both stating they found no mental deficiency of Plaintiff/Petitioner. Said ruling went forward with an Order being written that day and rushed to the doctor who refused to do such examination, presumably by such Order.

6. Plaintiff/Petitioner, by letter, shortly thereafter apprised Mr. Hamilton that he no longer has, in her opinion, jurisdiction herein.

7. It is Plaintiff/Petitioner's position that the opposing parties are merely unhappy that Plaintiff/Petitioner was so well taught by their peers (while in paralegal school) and since that time she has demanded her rights per the laws and caught so many of their "mistakes" (which have been more than hers); that there are provisions for damages (and now she has brought to their attention criminal charges provisions) that opposition counsel is determined to not allow Plaintiff/Petitioner a jury decision in these matters and, if at all possible, would like to completely destroy her. Why?

8. Plaintiff/Petitioner has integrity, does not lie about facts or laws, believes oaths of office mean what they demand, and wants to and will fight for truth, honor and justice in any way she can legally do so and especially where the fundamental law is

concerned. Oppositions actions are vindictive, wanton, reckless and malicious. It is obvious from the record that Mr. Hamilton joined in with Martin & Seibert counsel before (ex parte) going on the bench in Morgan County Circuit Court on April 8, 1996; he also had a duty to know the facts before making his decision and/or Order.

9. Per the above cited laws, Mr. Hamilton cannot possibly have jurisdiction to preside further herein, nor can any supreme court grant him jurisdiction. He originally had the power to act per consititutions, after taking the individual oath of office required by same constitution, upon violation of either constitution he no longer has the power to act, as it is the same with any other courts who have also acted in contempt of said constitutions. Counsel (Martin & Seibert) have complained because of the number of times Plaintiff/Petitioner has filed cases, and they have bragged about the unconstitutional decisions/judgments handed down by those courts, but how can any ordinary prudent person (without law school) possibly think that Full Raith and Credit can be forthcoming when in order to try to enforce same there has been violations of Article 6, Bill of Rights of the United States Constitution and Fourteenth Amendment in the case of the states' courts, plus stare decisis of three supreme courts, including Urited States Supreme Court.
Plaintiff/Petitioner's repeated court action filings

were prompted and provisions made by the illegal acts of judicial officers who certainly appear to be trying to cover for each other or whoever(?). Whatever their motives, the laws applicable to the facts provided cause for action, damages, per rules applicable to all.

10. In addition to those laws already quoted herein, our own West Virginia Supreme Court has also ruled that an individual has the right to self-representation, that case and a copy of the supplemental code was sent the Respondent and all counsel herein, heretofore, and is only cited here now. It is Blair v. Maynard (the latter now a West Virginia Supreme Court Justice), 174 W.Va. 247, 324 S.E.2d 391 (1984); Hawkinberry v. Maxwell, 176 W.Va. 526, 345 S.E.2d 826; Bego v. Bego, 177 W.Va. 74, 350 S.E.2d 701, latter both (1986). Plaintiff/Petitioner also pointed out on the side of that page that "It was the opposition that engaged in a course of conduct which demonstrates a clear intention to obstruct the administration of justice" _ not this Plaintiff/Petitioner _ and "Incidentally, all judicial officers are presumed to know these things."

11. Finally, Canon 1, states: "A judge shall uphold the integrity and independence of the judiciary."

    A. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing

high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

The above acts of Mr. Hamilton as complained of herein do not do what the above Canon demands, especially his non-judicial acts and neglect of duty owed responsibility to the constitutions.

Canon 2. A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

A. A judge shall respect and comply with the law, shall avoid impropriety and the appearance of impropriety in all of the judge's activities, and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

There were many who made public and private comments to Plaintiff/Petitioner concerning their repugnance to such action as Respondent did with his Order seeking a mental examination of her. It was also reportedly shocking to many that Respondent would do such an Order when they learned about the matter by an article in the local newspaper; he caused the already badly damaged image of the judiciary to dip even further into disrespect.

B. A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others _ (Emphasis added)

It is obvious from the facts cited (and a matter of record) that Respondent (1) did not know all the facts of the matter, (2) that it did not matter to him what the facts were, and (3) that there had obviously been a predetermined, ex parte, decision made before coming into the proceedings, and evidence that refuted their decision to order a mental examination was agreed to, and must be carried out, per what they had hoped Plaintiff/Petitioner would think was a constitutional or otherwise legally binding Order, given and written that day. Such conduct is in direct violation of the above Canon 2, A and B.

Canon 3. A judge shall perform the duties of judicial office

impartially and diligently.

B. (2) A judge shall be faithful to the law . . .

It is clear from the above that Respondent did not do this. He certainly appeared to forget he ever heard about the constitutions he at some time must have taken an oath to support at least twice (first upon becoming an attorney and second upon becoming a judge); he further failed to support laws made in pursuance therewith and stare decisis of

supreme courts, to include the one that appointed him to preside in this instant matter of record.

> E. Disqualification: (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where (1) the judge has a personal bias or prejudice concerning a party . . . (emphasis added)

It is clear that Respondent was biased and prejudiced concerning this Plaintiff/Petitioner before she ever appeared before him, otherwise why the predetermined, nonjudicial decision which is clear from the above cited (and documented) facts. Respondent was determined to order the mental examination. The prima facia evidence is clear to any ordinary prudent person that he was not about to accept qualified doctors' opinions concerning Plaintiff/Petitioner, but that she was to be further harassed and ordered to undergo such examination, it appearing to many to not only harass her but to also try to intimidate her and discredit her allegations/complaints concerning the acts of opposition and especially her complaints against the illegal acts of judicial officers which are true and a matter of record.

PRAYER

WHEREFORE, per the above cited laws (applied to the facts) it is clear the Respondent Hamilton no logner has jurisdiction herein, per his own conduct, and is disqualified to serve further and should recuse. No court can retain jurisdiction after violating their own oath of office, being in contempt for the very documents that give them the power to

act as a judge in the first place. Any ordinary prudent person would know this after analyzing such facts. Further, the Canons of Code of Judicial Conduct as cited herein, demands Respondent recuse.

Respectfully submitted,
S/ Marie M. McMahon
Marie M. McMahon, pro se
103 Pratt Street
Berkeley Springs, WV 25411
Tel: (304) 258-1117

STATE OF WEST VIRGINIA:
: ss
COUNTY OF BERKELEY :

Taken, sworn to and subscribed before me a Notary Public in and for the State and County aforesaid this 6th day of February, 1997.

Stamp:
Official Seal
Notary Public, State of West Virginia
MARILYN M. HALL
801 Johnson Mill Road, Berkeley Springs,WV25411
My Commission Expires June 12, 2000

S/ Marilyn M. Hall
Notary Public

CERTIFICATE OF SERVICE

I, Marie M. McMahon, pro se, Plaintiff/Petitioner, in the foregoing Motion to Disqualify, hereby CERTIFY that I have served a true copy of same uon Respondent, John M. Hamilton, 206 N. Elm Street, Moorefield, WV 26836, Paul Weiss, Martin & Seibert, P. O. Box 1286, Martinsburg, WV 25401, and Mr. Lucien Lewin, Steptoe & Johnson, P. O. Box 2629, Martinsburg, WV 25401, by U. S. mail, postage prepaid, this 6th day of February, 1997.

S/ Marie M. McMahon
Marie M. McMahon, pro se
103 Pratt Street
Berkeley Springs, WV 25411
Tel: (304) 258-1117

IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

PETITION FOR WRIT OF PROHITION

and/or

PETITION FOR WRIT OF MANDAMUS

Civil Action Nos. 95-C-37

W Va Sup Ct Nos. 23422
97-ADM-11

MARIE M. McMAHON
Petitioner,

Vs.

MARGARET L. WORKMAN, CH. J.
JOHN M. HAMILTON, RET'D CIRCUIT JUDGE
PAUL WEISS, MARTINSBURG, WV Attorney
MARTIN & SEIBERT

Respondents.

Attorneys for most Respondents:

Martin & Seibert
P. O. Box 1286
Martinsburg, WV 25401
(304) 267-8985

Attorney for Petitioner:

Marie M. McMahon, pro se
103 Pratt Street
Berkeley Springs, WV 25411
(304) 258-1117

Stamped:
Received and Filed in the office of the Clerk of the Circuit Court of Morgan County, WV on 3-11-97
Time: 4:20 p.m.
S/ Phyllis M. Hansroth
County Clerk

IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

MARIE M. McMAHON,

Petitioner,

Vs. **Case No. 95-C-37/Sup Ct 96078**
97-ADM-11

MARGARET L. WORKMAN, Chief Justice,
JOHN M. HAMILTON, Retired Circuit Judge,
PAUL WEISS, Martinsburg, WV Attorney, and
MARTIN & SEIBERT,

Respondents.

PETITION FOR WRIT OF PROHIBITION
and/or
PETITION FOR WRIT OF MANDAMUS

COMES NOW Petitioner, Marie M. McMahon, pro se, pursuant to Article 8, 3, West Virginia Constitution; West Virginia Codes 53-1-1/53-1-2; Rule 14, Rules of Appellate Procedure and Rule XVII(f) Trial Court Rules, to seek Writs of Prohibition/Mandamus against the above-cited Respondents. Petitioner states her grounds therefore as follows:

Findings of Facts and Conclusions of Law

1. On April 8, 1996, Respondent Hamilton presided at proceedings in Morgan County Circuit Court in Case Number 95-C-37, wherein he clearly came into said proceedings with predetermination of judgment to be rendered and he followed through on same to order (using Civil Rule of Procedure 17) to order a mental capacity examination of Petitioner, without "just cause" (per transcript).

2. Petitioner anticipated such illegal acts by opposition, came into court proceedings prepared with written psychiatric opinions from two (2) doctors, one local (not a psychiatrist) and one from a qualified psychiatrist in outpatient clinic at Walter Reed Army Hospital, Washington, D.C. (people higher up in government that Respondents, from all branches of government go to Walter Reed (that are eligible) to include Presidents of United States, United States Congresspersons and United States Supreme Court Justices, to use their teams of doctors. Can it be believed that Respondents Hamilton and Weiss stated their opinion not good for their purposes?

3. This is prima facia evidence there had been a predetermined ex parte decision made between Respondents Hamilton and Weiss, when coupled with their conduct in court when they stumbled around to come up with (and hoped for its acceptance) this document could not be accepted because Dr. Bartz (Walter Reed Psychiatrist) is not a resident of West Virginia (who knows, he could well be)

and/or not licensed to practice in West Virginia. Petitioner knows most of those medical and psychiatric personnel are highly skilled and teach others. Walter Reed General Hospital is considered one of the best medical centers in the United States.

4. However, (proper Rule) 35, Civil Rules of Procedure, does not specify nor require that such psychiatrist shall be licensed or reside in West Virginia, only that such "party to submit to a physical or mental examination by a physician or other qualified expert" and "The order may be made only on motion for 'good cause' shown" (emphasis added) . . . "and shall specify the time, place, manner, conditions, and scope of the examination_".

5. Petitioner submits no order written by Respondent Weiss and signed by Respondent Hamilton meets the above requirements. For example: What is "good cause"? Petitioner is guilty of only (per Respondent Weiss) filing numerous cases in courts that have ruled against her, and for, her opposition. That part is true. However, Respondent Weiss failed to disclose (and thereby misrepresented) facts and laws material and relevant to these matters he is bragging about winning in said courts. Laws applied to the true facts do not provide for those courts' decisions. In fact, said courts acted unconstitutionally and further violated their own oaths of office and thus had not the power (jurisdiction) to so rule. So say constitutional laws applicable as do previous supreme courts' decisions in compliance with said constitutions. Without benefit of legal training, most ordinary prudent persons know constitutional compliance by any court is

mandatory to jurisdiction and valid judgments and decisions. **No court, be it trial or appellate, state or federal, from highest to lowest, can "war" against the Constitution without violating their oath of office undertaken as required by Article VI, of the United States Constitution**... so said Chief Justice Marshall, with the entire nine justices in agreement. Petitioner submits all courts that Respondent Weiss has bragged about ruling in their favor, have been at war and in contempt of the very constitutions they have sworn to uphold in order to get their jobs. In fact, they took such oaths twice, once to be a lawyer and again to become a judge. They cannot possibly write, order or otherwise cause valid judgments when their own conduct does not pass constitutional muster/scrutiny! Petitioner had, and has, a fundamental civil right to seek a constitutional court, anywhere she may be able to find one, that will grant and administer according to the basic Bill of Rights and laws, made in pursuance to the U. S. and State Constitutions, mandatory guarantees, provided before taking property. Such is being denied, and always has been, because Petitioner is good at evidence . . . best evidence . . . opposition/courts do not want any jury to see such evidence, nor have a jury decision based on same. Therefore, like herein, wrong facts/laws were used to gain their illegal (unconstitutional) end result. This not only causes injury to Petitioner, it in effect destroys the foundation of our legal system (constitutions are but a mockery) and the judicial system as it is supposed to be, which in contrary to the Founding Fathers' Intentions, as well as the valid Acts of Congress. This Petitioner had the right to seek her constitutional guaranteed civil rights, no matter how many

times they were denied, had the right to add thereto as defendants those that violated her rights (per United States Supreme Court Justice Steven's, regardless of any state remedy that may have been available, not necessary to exhaust state remedies first, before seeking relief under 42 USC, section 1983), therefore, the repeated filings by Petitioner were supported by illegal acts of Respondents and laws applicable thereto . . . which is not, repeat NOT, "just cause" per proper laws, for Respondents to ever seek a mental examination of Petitioner. She may have been declared to have a problem by some, if she had allowed such to go without taking action, because of her personal knowledge of the applicable facts and laws and because of her duty-owed responsibility to Justice.

6. Since Respondents did not use proper rule to try to gain the illegal exam/denial of fundamental right, they did not bother to meet the rest of the requirements necessary under Rule 35. It appears they do not feel they have to be concerned (again as always) with the rules (laws), making up their own as they go along, as is shown by the resident/licensed requirement cited above. Isn't it a bit ironic that Respondents claim Petitioner does not understand the rules/process, etc. Who needs some kind of examination here? Is it not just the same "wheeling/dealing, ex parte, buddy system" at work. Who knows what the motives are, but motives Petitioner does not have to prove, only those acts illegal/illegal failures to act that took place. Petitioner submits the real push here in probably covered by Martin & Seibert Attorneys many mistakes of violating laws plus their failure to answer on time Petitioner" Amended Complaint

Number 2 (done at their request), thereby allowing per applicable rules a default judgment against them in favor of Petitioner. They would, no doubt, rather pay such (permitted by law) judgment to judicial officers, rather than the rightful recipient (Petitioner). Here again, Respondent Weiss was so sure he would get the Order from Respondent Hamilton to have Petitioner's mental examination that he just did not bother to answer the amended complaint, shows also why they were so "shook up" and had to come up with the "non-resident/non-licensed" psychiatrist bit once Petitioner presented those documents. The people of West Virginia (ordinary prudent jurors) will have no trouble seeing the above collusions of Respondents and their ex parte predetermined plans/decisions.

7. Respondent Hamilton admits on page 32 (transcript of proceeding of April 8) that he violated Petitioner's constitutional rights with "again just now". He also admitted clearly that he did not know all the facts of the matter. No constitutional court would make any ruling without becoming familiar with the documented facts. This is a completely reckless act by any court. How can anyone apply proper laws to facts that are not known? It also shows again predetermination, ex parte decisions, not allowed per applicable laws. It also shows bias against Petitioner.

8. On April 8, 1996 (same day), Petitioner sought a Writ of Prohibition against any mental examination, in West Virginia Supreme Court.

9. West Virginia Supreme Court said "Writ granted as moulded" December 13, 1996, still using Rule 17 as opposed to Rule 35. (Trying to possibly save embarrassment for the court, Petitioner wrote a letter to then Chief Justice McHugh pointing out wrong rule use plus other facts hopefully toward a better judiciary; she noticed opposition (all) plus made same a matter of record; no ex parte stuff here; no answer was forthcoming, nor was any expected by Petitioner.) Rule 35 is the only Rule that provides for Physical and Mental Examination of Persons, and is so titled.

10. Rule 17 is titled "Parties Plaintiff and Defendant" Respondents Weiss/Hamilton (Counsel for co-County/State Defendants did not motion for any such exam) want a "guardian ad litem" appointed to take Petitioner's place (which, no doubt, would mean an attorney they can hopefully wheel and deal with). However, said "guardian ad litem" can only be appointed (legally) if somehow Respondents can have "a physical or mental examination by a physician or other qualified expert" examine the person (only provided by 35) and must come before Rule 17 can apply, and, of course, IF there can be found in West Virginia (per Respondents only, NOT Rule 35. So, here ***again*** (as has been for years) are abuses of power by Respondent Weiss (Martin & Seibert Attorneys) and certain courts in agreements therewith, as Respondent Hamilton is herein. (Remember Honorable Judge Steptoe would not so act.) After finding the resident/licensed psychiatrist, he (she) must be willing to do such abusive exam and thereby violate Petitioner's fundamental civil rights since there is no legal "just cause" to do such exam (and Dr. Soule refused to be ordered to do

such) and two (2) said psychiatrist is willing to perjure themself and state Petitioner does not understand the rules, legal process, system, and is only able to do illegal acts so as to be harmful to herself and others.

11. Petitioner submits any ethical psychiatrist will (1) do like Dr. Soule, refuse to have any part in such farce or (2) will point out that though he/she is not an attorney, their ordinary prudent opinion is that Petitioner appears to understand and comply with written laws, constitutions, etc., better than the Respondents and/or those former decisions granted by courts of which Respondent Weiss seems to be so proud and (3) if a count was done, there would be more illegal acts by opposition and some courts, than there are by Petitioner. Facts are: Respondents do not have the right (nor cause) to try to order any doctor (psychiatrist) to examine Petitioner. Truth is: the wrongdoers are really trying to cover their own illegal acts, with yet another such act, and might prefer to keep the public from knowing about it.

12. On February 6, 1997, Petitioner Motioned to Disqualify Respondent Hamilton from further presiding herein. Actually, per applicable laws, he no longer has jurisdiction because of his own denial of fundamental rights (WV Sup. Ct. said in 1984/1986 that a person has the right to self-representation). Fundamental rights are covered by constitutions, therefore, since constitutional mandatory rights (compliance therewith) is a jurisdictional requirement, Respondent Hamilton can no longer claim jurisdiction, by his own admission (page 32, remember_transcript cited). Further, Respondent Hamilton violated 1, 2 and 3, Judicial

Code of Ethics to include the one that states "A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned", and (a) "He has a personal bias or prejudice concerning a party." He cannot deny, per documents, herein, he is biased. However, there is no way he could retain jurisdiction of this matter per the above cited facts and as reflected by the following laws applicable as well as those cited above. Additionally, on February 14, 1997, by Order attempting to order another psychiatric examination BEFORE waiting the outcome of Disqualification by the Chief Justice. (He refused to recuse, it was expected once the facts were analyzed as cited above.) So what was his rush to try to get such an examination? (2) How did he KNOW the Chief Justice would retain him, especially in view of the facts/laws cited therein??? THIS ALSO HAS THE APPEARANCE OF IMPROPRIETY_IS EVERYONE MAKING UP THE LAWS AS THEY GO ALONG, INSTEAD OF APPLYING THOSE WRITTEN??? (This is the second time Respondent Workman has retained judges in cases wherein there was KNOWN ex parte predetermined judgments handed down from the bench, later . . . Chris Wilkes/Daniel Booth were the other two involved. . . Booth admitted same, before realizing Petitioner was hearing him.) Such acts are NON-JUDICIAL ACTS, PER CASE LAWS . . . the same is true of unconstitutional acts . . . constitutions do not give permission for executives, legislators or judicial officers to violate same, nor do any supreme court written decisions.

13. Respondent Workman did not agree with Petitioner's Motion (which is her right to choose), however, by her own

acts and the attached Administrative Order dated February 27, 1997, she, too, has denied fundamental civil rights, plus she does not have the power to grant Respondent Hamilton jurisdiction again herein, which he lost per his own personal acts, in addition to the violations of above cited canons. Same were cited in Petitioner's Motion to Disqualify, which Respondent Workman should have taken cognizance of, before joining the list of Respondents. Her Order stating "That proceedings be held in the manner provided by law" is impossible with Respondent Hamilton presiding, under the facts with proper laws applied. Please take judicial notice of same. Additionally, on Respondent Workman's side is Petitioner's typing mistake of year 1997, it should have been 1996, facts leading to same took place in 1996; there can be no ex post facto laws either, but the thirty (30) days may have been considered by Respondent Workman, however, no matter what year, she does not have the power to give him jurisdiction after his having lost same granted by constitutions, for his violation of same constitutions. Again, take judicial notice of the facts and applicable laws. Please everyone who can ethically participate in the granting of these sought writs.

Conclusions of Laws Applicable

14. Since a state supreme court chief justice is a respondent herein, United States Supreme Court Decisions (federal laws) will be used extensively, but not exclusively. After all, THIS COURT said in 1984, Blair v. Maynard, 174 W.Va. 247 that "The right of self-representation in civil proceedings is a fundamental right which cannot be

arbitrarily or unreasonably denied." The justice who wrote the opinion made the comment that many lawyers make just as many mistakes, or words to that effect. It is Petitioner's position that the lawyers herein have made many more and far more serious than has Petitioner, not only herein, but also in related cases. Martin & Seibert and their attorneys now, per rules applicable, owe Petitioner ONE MILLION EIGHT HUNDRED THOUSAND DOLLARS ($1,800,000.00) for what they want to call an oversight. Eighteen Hundred Thousand Dollars is quite an oversight and certainly not too much (or even enough) after the way they have harassed Petitioner; and engaged in a course of conduct which demonstrates a clear intention to obstruct the administration of justice . . . accomplishing it time after time, with the help of certain courts, not all, but a great majority.

> The fundamental right of self-representation recognized in this section may not be denied without a clear showing in the record that the pro se litigant is engaging in a course of conduct which demonstrated a clear intention to obstruct the administration of justice. Blair, supra_ Bego v. Bego, 177 W.Va. 526 (1986).

As has been pointed out, it is opposition, NOT PETITIONER, who has and IS demonstrating a clear intention to obstruct. Petitioner seeks and has always sought a trial by jury, administered by a constitutional court; jury verdict, based on observation of Rules of Evidence; in a court that is, per the West Virginia Constitution, "open to

all". One retired judge once counseled, "You can get as many opinions as there are judges, almost, depending on who owes who a favor." The above case cite is under Article III, 17, III, 13, says Right to Jury _ shall be preserved; III, 10, Safeguards _ property and liberty, as well as life. These are West Virginia Constitutional guarantees and United States Constitution guarantees the same, with which the above agrees/complies. So why hasn't it been forthcoming to this Petitioner? WHY WOULD THIS COURT ALLOW LOWER COURTS AND THOSE ATTORNEYS APPEARING THEREIN, SEEKING DENIAL OF THE ABOVE, TO CONTINUE which is obviously going to happen again by Respondent Hamilton IF he is allowed to stay in the matter. He has already proved he will (has) violated the above cited laws, which, to any prudent person, took away his jurisdiction (power) to preside herein, by his arbitrary and unreasonable acts as complained of herein and elsewhere.

15. Many of the following laws have been quoted before, so, yes, Petitioner is repeating herself. She is going to continue to do so until some court has the courage to live up to their own oaths of office and act accordingly. WHY? Because the following research does not allow for what has been done in the past by lawyers and courts (most courts, not all). Please take judicial notice:

> Our system of jurisprudence rests on the assumption that all individuals, whatever their position in government, are subject to federal law: "No man in this country is so high that he is above the law. No

> officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it." United States v. Lee, 106 US, at 220, 27 L Ed 171.

Hence Petitioner's inclusion of Respondent Workman herein. Take judicial notice, please.

> Decisions of the United States Supreme Court rendered by written opinions are binding on all courts, state and federal, the Court's holding is stare decisis and cannot be overruled except by the Court itself, _ Jordan v. Gillian, 500 Fed Rptr 2d Series 702.

It is realized that all are presumed to know the above, but the actors have not acted in compliance therewith. Additionally, in agreement with the above, our former (some present) West Virginia Supreme Court Justices have stated "The natural citizen in our system of government has the right to expect that his elected officials, agents and appointees shall comply with the law." This is exactly what, and **all that Petitioner has ever sought** in any court at any time. She had/has no power to make (force) attorneys or judges to do so, but she did have the right, knowledge and whatever necessary legally to file cases against those that gave her cause for action against them; the laws supported the facts; the facts are that lawyers and (most) judges kept right on violating laws and showing contempt for constitutions that they have sworn to uphold and support.

Am Jur 2d, Attorneys at Law, Section 4, states: "He has a duty to support the constitutions and laws of the United States and the State." Therefore, lawyers were wrong to ASK OR SEEK courts to act unconstitutionally. Am Jur 16, Constitutional Law:

> The Federal Constitution is binding on all officers and departments of both the federal and state governments, including every court (whether it derives its authority from the state or from the United States).

Martin & Seibert Attorneys argued that is not so, but let us see further:

> The Constitution and the laws of the United States are the supreme law of the land and to them every citizen of every state owes obedience in his individual or official capacity. Ex Parte Siebold, 100 US 371, 25 L Ed 717.

In Cooper v. Aaron, 358 US 1, it is stated:

> No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it. Chief Justice Marshall spoke for a unanimous Court in saying that "If the legislatures of the several states may, at will, annul the judgments of the courts of the Untied States, and destroy the rights acquired under those judgments, the Constitution itself becomes a solemn mockery _" United States v. Peters, (US) 3 L Ed 53.

This supports Petitioner's acts concerning the violations of oaths of office, which is really *common sense*. If a court (or anyone) cannot have power (jurisdiction) to act until after taking the individual oath of office, then it follows that, as cited by Mr. Justice Stevens, "_the violation is complete as soon as the prohibited action is taken_" , thus allowing application of 42 USC, 1983, as a remedy, regardless of any state remedy. Daniels v. Williams, cited herein elsewhere, 88 L Ed 2s 672 (1986). This is another law ignored by opposition in this case and all courts except the Honorable J. Steptoe. Violations of constitutions by courts causes loss of jurisdiction, which causes Respondent Weiss' bragged about orders to not be worth the paper they are written on. So say the above-cited laws. In accord with same is another in Barger v. State of Kansas, 620 F Supp at page 1437, and in compliance with Mr. Justice Stevens of the above cite, United States Supreme Court Justice, still. Barger, supra, says: "We have allowed such suits to proceed on the theory that when an officer acts unconstitutionally he is 'stripped of his official or representative character and is subjected to the consequences of his official conduct,'" quoting Ex Parte Young. 209 US 123 (1909 through 1984) case cites omitted.

So, once again, Petitioner is able to show that she followed the constitutions and laws as written by United States Supreme Court decisions, and/or those of the State Supreme Courts written in accord with the constitutions. **Therefore, where is the "just cause" for any court to try to order any psychiatrist to examine this Petitioner concerning her mental capacity to understand the laws as written_and try to exercise her rights as provided by the United States**

Constitution's Bill of Rights, guarantees due all? It must be recognized that it was (is) the fault of a crooked judicial system, gone amuck, that gave her cause for action, no matter how many times such judicial people so acted_the "Courts open to all" applies. They should have taken their individual oaths of office seriously and not forgotten the same the moment they got their jobs. Our Founding Fathers and Congress must have known what they were doing all those many years ago_and thank goodness same cannot be changed, except illegally, which no one has the right to do.

16. Article 6, United States Constitution (referenced by Mr. Chief Justice Marshall above) **demands and shows only the Constitution can grant jurisdiction (not any other judge) and under the specific condition of individual oath of office.** That should make it clear even without the above-cited case laws, to any thinking person upon analyzing such, that any officer who violates their own oath of office, by so doing, no longer has the power (jurisdiction) to act, and no one can give said power back, they forfeited same by their own actions. Article 6, U.S. Constitution, merits quoting again:

> This Constitution, and the Laws of the United States_shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding_and all executive and judicial officers, both of the United States and of the several States, shall be bound by Oath or Affirmation to support this Constitution:_(in pert Part)

The word shall is mandatory. It has not happened herein by the Respondents nor has it happened in the past, if so, Petitioner would have had no cause for the many filings complained of by the Respondents. Additionally, the above-cited laws were also violated. This presents a problem for THIS COURT, which cannot possibly be thought to be the fault of Petitioner. She odes not have the power to correct such judicial officers. At least no in the same way this Court has, which, Petitioner submits, is the duty of said court to do in the interest of justice and for the Public welfare.

17. In Michies Jurisprudence, re Jurisdiction, Sec. 11:

> In those cases where jurisdiction of the court depends upon compliance with certain mandatory provisions of law, the court's order, spread upon its order book, must show compliance or jurisdiction is not obtained.

Respondent Hamilton's Orders do not show compliance with fundamental civil rights, nor do they show compliance with Rule 35, and certainly not Rule 17, since 17 cannot possibly apply until after proper application of Rule 35, which cannot constitutionally be obtained. Petitioner submits it is for THIS COURT (or the next higher court) to decide legal issues and doctors should not be asked to do the work of Supreme Court Justices. This Court should be capable of KNOWING whether the above-cited laws are valid and are to obeyed by all. This Court has ruled itself that "When a jury has been demanded in a controversy over Twenty Dollars ($20.00), the impaneling of a jury to try the issue is a jurisdictional requirement, and a judgment rendered

without complying with it is void. This is in accord with the United States Constitution Amendment Seven and case laws pursuant to same. USC 28, Section 2862, also states: "The power of courts to enter valid judgments are federal constitutional limits" _ which is why state constitutions must be in accord with the federal constitution.

18. Now that it appears to an ordinary prudent person that the above shows lack of jurisdiction by unconstitutional courts, one other issue must be covered for benefit of Respondent Hamilton. He wants to appear that he cannot imagine, or understand, how Petitioner can seek change of the Virginia judgment in West Virginia. In THIS COURT, in Perkins v. Hall, 123 W Va 707, **THIS COURT RULED**: "Lack of jurisdiction of the court rendering a judgment makes the judgment void and subject to attack in any jurisdiction wherein it is relied upon." And

> The defendants in any judgment or decree rendered in the courts of a sister state may defend against it in West Virginia Courts_

However, it is not the lack of understanding the above that probably causes Respondent Hamilton problems: the problems are the ex parte predetermined decision made with Martin & Seibert Attorneys (exactly as did Donald C. Hott in related cases) _ and determination to rule adverse to constitutions and laws made in accord therewith_any ordinary prudent person observing in the court proceedings can have no trouble understanding the "appearance of impropriety" in either instance. This, of course, is not

allowed by Canon 2. "A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities." And A. "A judge shall respect and comply with the law,

> shall avoid impropriety and the appearance of impropriety in all the judge's activities, and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
>
> B. A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interest of the judge or others; _ and
>
> Canon 3. B (2) A judge shall be faithful to the law _

It is clear that the judges herein complained of forgot they ever heard of the constitutions, as well as the above Canons and Canon 3, E. states:

> Disqualifications, (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (a) the judge has a personal bias or prejudice concerning a party_

It would seem there would have to be bias/prejudice for someone when any court goes far enough to violate fundamental civil rights as has been pled and can be

documented herein. Prejudice is clear with Respondents in not accepting qualified psychiatric documentation as enough to stop any mental examination being ordered, without, without going forward to violate fundamental rights provided by our constitutions and per case laws also. It is further harassment of this Petitioner, plus no doubt, it might be to their advantage to not have to deal with Petitioner any more. She can be gotten rid of easily: just grant what the laws provide and which she has the right to expect. So says this Court in Strobe v. Latimer, WV 1979, as referenced above. Just comply with the laws as written. Do not make up laws as we go along, as has been done herein. Stop trying to intimidate, and discredit, Petitioner's credible allegations and complaints concerning past performances of opposition and courts in collusion therewith. Most are a matter of record "best evidence" as any prudent person can see. Petitioner has to quote one person, "You've been through the mill", which does not speak greatly in praise for the judiciary, with truthful facts.

19. Respondent Workman's refusal to disqualify Respondent Hamilton under XVII and the applicable facts and laws provides for application of (f) "Challenge to disqualification" and _ "This rule shall not, however, prohibit any party from seeking or using redress available by writ of prohibition or any other appropriate extraordinary writ." (f) is being used here, as is Mandamus/Prohibition with mandamus being "The primary purpose or function of a writ of mandamus is to enforce an established right and to enforce a corresponding imperative duty created or imposed by law." Prohibition is

> The writ of prohibition shall lie as a matter of right in all cases of usurpation and abuse of power, when the inferior court has not jurisdiction of the subject matter in controversy or having such jurisdiction, exceeds it legitimate power.

Respondents Hamilton/Weiss certainly did that when they denied fundamental rights arbitrarily and without reasonable cause, per THIS COURT in Blair, supra. Further, they acted non-judicially in the ex parte, predetermination of the outcome of the matter in not giving credence to the psychiatric document from Walter Reed Army Hospital. Also, Respondents abused their power in stating such psychiatrist must live and be licensed in West Virginia. The proper Rule 35 does not so state. This was an "on the spot law made up (invented)" by Respondents (to aid in their previous ex parte, predetermined agreement to order Petitioner's examination. Constitutional jursidictional requirements/abuse of power acts renders Respondent Hamilton without jurisdiction (power) due to his own illegal acts. Courts "stare decisis" in support of constitutions have so stated.

Conclusions

20. It is clear from the above-cited facts/laws, that Petitioner has a fundamental right to represent herself; that she had/has the right to a constitutional court that would grant Bill of Rights guarantees to her; that she is guaranteed "due process" under the Fourteenth Amendment of the U.S. Constitution; that having failed to find same, had the right

under the same constitutional guarantees and laws in pursuance therewith, to file as many cases as there were courts, to try to find such redress/justice_regardless of numbers since "courts open to all" jury trial shall be preserved, all of which should have been forthcoming before taking any property, all of which has been violated, over and over, by numerous judicial officers (supposedly); that the above herein cited acts and failures to act do not give LEGAL "Just Cause" to seek any medical/psychiatric/mental examination of Petitioner; that in so doing Respondent (any named or unnamed) (seeking to have done, or providing for same to be done) have violated Petitioner's fundamental civil rights; thus writs for mandamus/prohibition is proper to enforce those duty-owed and imposed by law rights OR prohibit such from being tried again and/or going forward with what has so far been attempted by and ORDERED, including the two hereto attached. (Exhibits, writ attachments 1, Respondent Hamilton's 2/14/97 and Respondent Workman's 97-ADM-11). **(All repeats are emphasis!)**

Respondent Workman does not have the power to reinstate jurisdiction to Respondent Hamilton. Both gained their original power from the Constitutions. Constitutions do not give power to anyone to violate them, to use any motives to show contempt for same Constitutions. Constitutions do not provide for malicious, reckless, vindictive, abusive acts against litigants or any person, from a paralegal to a chief justice, from a laborer to the president. Laws apply to all with "equal protection", etc. Take judicial notice of the appearance of impropriety here in that Respondents appear to

have been in communication since Respondent Hamilton was in such a hurry to get his 2/14/97 Order in the works, he did not feel it necessary to wait to see if he would be disqualified by Respondent Workman. **HOW COULD HE HAVE KNOWN SHE WOULD OD WHAT SHE DID ON 2/27/97 WHEN THE ABOVE LAWS DO NOT SUPPORT IT?**

Prayer for Relief

21. WHEREFORE, Petitioner prays for the following relief:

a. That mandamus issue against Respondent Workman's 97-ADM-11 Order and same be declared null and void; that a constitutional judge who will grant due process be appointed to replace Respondent Hamilton herein; that Respondent Hamilton have no further proceeding of any kind, with Petitioner.

b. That Respondent Workman recuse herself and be prohibited from any participation herein, or in any of Petitioner's matters due to the above-cited facts/laws applicable.

c. That Respondent Weiss (or any other Martin & Seibert attorney) be prohibited from seeking any further mental examination of Petitioner, even if they use applicable rule for same, Rule 35.

d. That those justices (here), that can ethically do so, please consider and make the appointment of a constitutional prosecutor (not all are, as we well know) to prosecute

Petitioner's complaints and/or a special grand jury to investigate same, as opposed to a guardian ad litem, which cannot per applicable laws be forthcoming_in the interest of justice, the judicial system and the welfare of the people of West Virginia, as a whole.

e. Any further relief to the Petitioner that is just.

Respectfully submitted,

S/ Marie M. McMahon
Marie M. McMahon, pro se
103 Pratt Street
Berkeley Springs, WV 25411
(304) 258-1117

Certificate of Service

I, Marie M. McMahon, Petitioner in the foregoing Petition for Writ of Prohibition and/or Petition for Mandamus, hereby CERTIFY that I have served a true copy of the same upon each individual Respondent by U. S. Mail, First Class Postage Prepaid, at their respective addresses of record, this 11th day of March, 1997.

S/ Marie M. McMahon
Marie M. McMahon

VERIFICATION

STATE OF WEST VIRGINIA :

: ss

COUNTY OF MORGAN, to-wit:

I, Marie M. McMahon, Petitioner herein, hereby certify and state the foregoing facts and laws are true and correct to the best of my knowledge and belief, and to the extent based upon information and belief, they are true and correct to the best of my knowledge and belief, I believe them all to be true.

S/ Marie M. McMahon

Marie M. McMahon, pro se
103 Pratt Street
Berkeley Springs, WV 25411
(304) 258-1117

Taken, sworn to and subscribed to before me, a Notary Public, in and for the aforesaid County and State this 11th day of March, 1997.

S/ Marilyn M. Hall
Notary Public

Stamp:

Notary Public of West Virginia

MARILYN M. HALL

801 Johnson Mill Rd. Berkeley Springs,WV 25411

My Commission Expires June 13, 2000

IN THE CIRCUIT COURT OF MORGAN COUNTY, WEST VIRGINIA

MARIE M. McMAHON,

Plaintiff,

v. **CIVIL ACTION NO. 95-C-37**

JOHN P. ADAMS, HON. DONALD C. HOTT, GLEN STOTLER, DONALD SHARP, MARTIN & SEIBERT, DANIEL T. BOOTH, SUSAN SNOWDEN, PAUL WEISS, MORGAN COUNTY FIRE BOARD, and HOWARD TRITTIPOE,

Defendants.

ORDER APPOINTING PSYCHIATRIST

This matter came before the Court on April 8, 1996, upon the motion of Defendants Martin & Seibert, L.C., Paul Weiss, Susan Snowden and Daniel Booth to determine the Plaintiff's mental competency. At said hearing, this Court found that good cause had been shown for the appointment of a competent psychiatrist to examine Plaintiff and report back to the Court concerning the Plaintiff's ability to proceed with the present action in her own right or whether a guardian ad litem should be appointed and appointed Bradley Soule, M.D. to examine and evaluate the Plaintiff. Dr. Soule subsequently declined to perform the requested services.

subsequently declined to perform the requested services. Upon Dr. Soule's declination and upon the parties' inability to agree upon an alternate psychiatrist to perform said evaluation, the Court hereby appoints Raymond Shapiro, M.D. to evaluate the Plaintiff for the reasons previously stated herein.

{Received 2-14-97
10 AM Mail PMH}

WHEREFORE, it is ORDERED that Raymond Shapiro, M.D. be, and hereby is, appointed to examine and evaluate the Plaintiff and report back to Court within thirty (30) days of the date of this Order his findings as to the concerns of the Court heretofore stated and the Court shall disclose the said findings to the parties hereto only to the extent that the relevancy of the said findings to this or any other proceeding before the Court, in the opinion of the Court, shall outweight the importance of maintaining confidentiality of the said findings as set forth in **WEST VIRGINIA CODE Sec. 27-3-1(a).**

The Clerk of the Court is **ORDERED**, upon entry of this Order, to transmit to Dr. Shapir copies of Defendants' present Motion, all exhibits thereto, the Plaintiff's Opposition thereto and all other pleadings and papers contained in the record of the present case pertaining to the Plaintiff's prosecution of other civil actions, including the opinion of the Supreme Court of Appeals of West Virginia herein. Dr. Shapiro is instructed by the Court that it requires no general finding of Plaintiff's general competency. Rather, Dr. Shapiro should limit his evaluation and report to the question of whether the Plaintiff is competent to act responsibly with regard to this and other civil actions in which she has been

involved and whether the appointment of a Guardian ad litem would be in the Plaintiff's interest. The Court would request that the foregoing report be expedited as much as is reasonably possible. *Dr. Shapiro is directed to make his report to the Clerk of this Court only and not to any party in receipt thereof. The Clerk shall furnish a copy thereof to the undersigned Judge and seal and keep the original be opened only by Order of the Court.*

The Plaintiff's exceptions to this Order are noted and preserved for the record. The present action is stayed until such time as Dr. Shapiro has reported to the Court. Until such time, resolution of all pending Motions is continued. The costs of the evaluation by Dr. Shapiro shall be taxed as costs herein.

The Clerk of this Court shall transmit an attested copy of this Order to all parties or record.

Entered: 2-14-97

S/ John M. Hamilton
Judge John M. Hamilton,
Morgan County

cc: 2-14-97
M. McMahon
Snowden
Booth
Weiss
Lewin
Power
Dr. Shapiro

Stamped:

Civil, Order Book 24
Page 103
Date 2-14-97
Initial JLC

Stamped:
A TRUE COPY, ATTEST:
S/ Betty R. Moss
Clerk of the Circuit Court
of Morgan County,
West Virginia
by Judy L. Crosby, Deputy

ADMINISTRATIVE ORDER
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RE: MARIE M. McMAHON V. JOHN M. HAMILTON, JUDGE
MORGAN COUNTY CASE NO. 95-C-37

WHEREAS, the Honorable John M. Hamilton, Senior Status Judge, has advised the Chief Justice of the Supreme Court of Appeals of a motion filed for his disqualification from presiding in the above-styled proceeding; and

WHEREAS, Judge Hamilton has further advised the Chief Justice that he does not desire to recuse himself from presiding in said case; and

WHEREAS, upon review of said motion, and in accordance with Rule XVII (a)(3)(B)(i) , the Chief Justice has determined that the matters set forth therein are facially insufficient to warrant such disqualification;

IT IS THEREFORE ORDERED that the Honorable John M. Hamilton, Senior Status Judge, be, and he hereby is, directed to continue to preside in the above-referenced case; and

IT IS FURTHER ORDERED that the Circuit Clerk of Morgan County record this order in the office of said Clerk and that proceedings be held in the manner provided by law.

ENTER: FEBRUARY 27, 1997

S/ Margaret L. Workman
Margaret L. Workman
Chief Justice

Rec'd. 3-6-97, 10 a.m. Mail-BRM

Stamp: A TRUE COPY ATTEST:
S/ Betty R. Moss
Clerk of the Circuit Court of
Morgan County, West Virginia
By Phyllis M. Hansroth, Deputy

Stamp: ADM ORDER BOOK 3
PAGE 62, DATE 3-7-97,
INITIAL *PMH*

COC: 3-7-97
Lewin
Snowden
Booth
Weiss
McMahon
95-C-37

Chief Justice Margaret L. Workman
Justices
Thomas E. McHugh
Robin J. Davis
Larry V. Starcher
Elliott E. Maynard

OFFICE OF THE CLERK
SUPREME COURT OF APPEALS
State Capitol
Charleston, WV 25305-0831
Telephone: (304) 558-2601
Facsimile: (304) 558-3815

March 13, 1997

Marie M. McMahon
103 Pratt Street
Berkeley Springs, WV 25411

Re: SER Marie M. McMahon v. Hon. Margaret L. Workman, Chief Justice, No. 970536

Dear Ms. McMahon:

Your petitioner for writ of prohibition was received and filed in this office today.

Your paper will be passed directly to the Court for its consideration and you will be promptly notified of the Court's decision by copy of its order.

Sincerely,
S/ *Connie A. Bowling*
Connie A. Bowling
Interim Clerk

IN THE CIRCUIT COURT OF MORGAN COUNTY

MARIE M. McMAHON, Plaintiff
-v- **Civil Action No. 95-C-37**
JOHN P. ADAMS, Et.Al.

WHEREAS, by Order of this Court entered in this cause on the 14th day of February, 1997, it was ordered that Raymond Shapiro, M.D., examine and evaluate the Plaintiff and then report his findings to this Court as therein directed, and that the said Raymond Shapiro, M.D. has scheduled said examination to be conducted at the hour of 3:00 o'clock in the afternoon of the 27th day of March, 1997, at his office at 235 South Water Street, in the City of Martinsburg, West Virginia, 25401, it is therefore ORDERED

That the said examination and evaluation shall be made at said time and place, and that the Plaintiff, Marie M. McMahon, shall be and personally appear and undergo said examination and evaluation at said time and place.

It is further ORDERED that the findings and report of Dr. Shapiro be made by him to the Clerk of this Court and not be revealed to any party to this Cause, as all heretofore Ordered.

The Clerk is directed to enter this Order and to cause an attested copy thereof to be served upon the Plaintiff and a copy to be transmitted to Counsel of record and to Dr. Shapiro.

ENTERED: 3-1-97

S/ John M. Hamilton
Judge

Rec'd. 3-17-97, 10 a.m., Mail, BRM

Stamp: A TRUE COPY ATTEST:
S/ Betty R. Moss
Clerk of the Circuit Court of

Morgan County, West Virginia
By Phyllis M. Hansroth, Deputy

Stamp:
CIVIL ORDER BOOK 24
PAGE 140, INITIAL *PMH*
DATE 3-18-97

cc: 3-18-97
Dr. Shapiro
McMahon
Snowden
Booth
Weiss
Lewin

IN THE WEST VIRGINIA
SUPREME COURT OF APPEALS

MARIE M. McMAHON,

Petitioner,

vs. **No. 970536**

Hon. Margaret L. Workman, Ch J, et al,

Respondents.

Stamp:
Received & Filed in the Office
of the Clerk of the Circuit
Court of Morgan County, WV
on 3-27-97. Time: 2:55 PM
S/JLC, Deputy Clerk

PETITION ADDENDUM

COMES NOW the Petitioner, Marie M. McMahon, pro se, being within the rules for pages and Rule 14, Rules of Appellate Procedure, to submit this addendum in furnishing further facts/laws applicable in the cause of justice. She submits THIS COURT in toto should be apprised of this entire matter, as well as related cases (used by opposition to seek illegal exam). This addendum, per se, is because of the actors' conduct since Petitioner's originally submitted (the particular) matter _ i.e., 970536, as cited above.

Findings of Facts and Conclusions of Laws

1. Within as short a time as possible, it appears Respondent Hamilton tried to correct his previous unconstitutional orders with the attached document. Please note, however, it still is not proper legally. There are several reasons it cannot possibly be valid. Some are as follows:

a. Please take judicial notice of those complaints pled in the original Petitioner herein,

b. Add to that the action outlined (document hereto attached) in Item 1, above, which causes the ordinary prudent person to notice the appearance of impropriety again in that Respondent acts like he already has the answers of all five justices and does not need to wait for the three new justices to do their duties. It would be a complete insult to Petitioner if she were in one of their chairs (position).

c. Respondent still has not established what laws allow his action. Indeed, it appears he took his cues from Petitioner's Petition to the West Virginia Supreme Court of Appeals (but Respondents have the nerve to seek mental examination to learn, so they say, if Petitioner "understands" the legal process.

d. Respondents have indicated that such examination will be paid from taxpayers' funds, per some of those involved.

e. It is the Petitioner's position that to pay for such exam with tax dollars would be a misapplication of said funds, in addition to all the other violations of laws already cited herein.

f. Petitioner submits Respondents are acting outside the limits of law and mode of procedures.

Discussion of Laws Applicable

2. Please take judicial notice of those facts/laws already pled herein and apply these further cites, etc. Recall Respondents desire to have such exam is (so they say) because Petitioner has lost her home (Judgment void ad initio, per Va. Law, where it all began); she has been sanctioned for multi-thousands of dollars by subsequent courts, federal and state _ (all unconstitutional judgments per proper application of laws, to include constitutions). She does not understand and/or will not accept the rulings of those numerous court decisions, court procedures, etc. (She does not accept same because of their unconstitutionality). Article 6, U.S. Constitution Bill of Rights, Fourteenth Amendment so states as do written Supreme Court Decisions, including U. S. Supreme Court, including the West Virginia Supreme Court of Appeals, until 23422 (where apparently part of said document must have been copied from Martin & Seibert pleadings which can NOT absolutely be relied upon, because of their misleading representations. It is something they are all good at, and the Petitioner has tried to deal with them for over twenty (20) years. She has yet to find one attorney in said firm to be ethical. Truth! Take judicial notice please of this, and those laws already cited herein also, and in addition thereto, judicial officers are presumed to know those and another follows:

But here the record reveals a jurisdictional defect in the adjudication proceeding itself, and such defect renders the order of adjudication void **ad initio**. It is immaterial that the order was not attacked by direct appeal or by a bill in equity. Slaughter v. Commonwealth of Virginia, 284 S.E.2d 824 (1981).

(a) Since the judgment is VOID in Virginia (case above is exactly on point, as are those others cited herein elsewhere), it follows the judgment is void in West Virginia and elsewhere. This has been known since Day One, by all judicial officers. Case 10607 was (is) void **ad initio, constitutionally, no jurisdiction retained because court usurped jury function, used discretion he did not have, to rule against the overwhelming preponderance of the evidence. Aschmann worked for the opposition, not his clients. (Petitioner was one of his clients.) Petitioner was (is) the one with almost all of the documented "best" evidence who UNDERSTOOD what happened, etc.**

No subsequent court had the power to make the above-referenced judgment valid by refusing to grant access to courts (per constitutions and other laws in pursuance therewith). They could and DID violate federal and state laws themselves, and, as a result, were added as defendants in the next civil cause of action provided by 42 USC, Sec. 1983/1985. (So said Mr. Justice Stevens, U.S. Sup. Ct.) There is also applicable criminal laws. Those are Title 18, Ch. 13, Sec. 241/242, hereto attached #2.

(b) As to the dismissal of the October 15, 1985, case by J. Snead (referenced in West Virginia State Supreme Court of Appeals Case No. 23422): It was his beloved son

who was (is) on the Board at F & M Bank. (Also notice the above-referenced matter in 23422 did not mention F & M as those sued. Why not? They have a pattern of such conduct, so reported to Petitioner. Note also attached #3 and note apparently not all lawyers/judges can be bought by them or otherwise caused to be illegal as herein complained about.) Per Canons 2 and 3, Judicial Code of Ethics, Snead could not preside therein. It is also why (appears to be part of the reasons) Petitioner's Attorney Aschmann could not get Snead to accept any complaint (repeat) (of course it was collusion) not dumbness. It was reckless, vindictive, malicious, wanton conduct, on the part of all those, and so pled. All three attorneys Petitioner retained and paid, allowed such to proceed. Further, all three lied to Petitioner, some more than others, in addition to allowing violations of federal/state laws and aiding and abetting therein. (Matter of record, and tells us why there is an affidavit by one of them.)*

(c) Did such acts make those decisions constitutional and legal? Of course not. Constitutions already cited herein do NOT allow for such crimes, no matter how many courts try to obstruct justice, act like they never heard of constitutions, when we all know they all had to take the oath of office in order to get their jobs. NOR DO UNITED STATES SUPREME COURTS' WRITTEN DECISIONS, NOR VIRGINIA'S SUPREME COURT WRITTEN DECISIONS, NOR WEST VIRGINIA'S SUPREME COURT WRITTEN DECISIONS, heretofore_and cited herein by Petitioner.

(d) A writ was awarded in Virginia in Harris v. Deal (Va 1949) 189 Va 675, wherein Virginia Supreme Court said re court "_cannot act outside limits of law or

mode of procedure_" and under constitutional law at 5, also states such as herein pled causes judgment to be void. Such takes in both judges Kent/Snead. 10607 (Kent) used to illegally take Petitioner's home by Martin & Seibert attorneys with the help of Chris Wilkes/Donald Hott, and "Fire Fee" locals also took property worth more than Twenty Dollars ($20.00), illegally. The West Virginia State Supreme Court of Appeals said in City of Fairmont v. Pitrolo, "fire fee" is an ad valorem tax" (4th Cir agreed in City of Huntington v. United States). Also void constitutionally.

(e) Those cases cited above were written up in 23422 as gospel sounding exactly like Martin & Seibert. The above is gospel truth (as pled by Petitioner herein and elsewhere). Nor did Virginia seek mental examinations of litigants who sought the above writ. (However, someone might when Petitioner starts to try to get those illegal, corrected in Virginia.) The Petitioner feels she should go federal since more federal judges are involved in Virginia than West Virginia. It was recently reported on the news that Congress is going to impeach some federal judges, apparently for doing exactly what is complained of herein and elsewhere by Petitioner. Good riddance! Even if one was my own mother. Petitioner has not found any laws that support mental examinations for litigants who seek guaranteed civil rights, as herein is being attempted.

(f) Taxpayers, voters, ordinary prudent persons have no desire to have any judicial officer misapply their tax money to pay any doctor, of any kind, in order to try to force same to aid the judicial officers in their "cover up" of their own illegal, unconstitutional acts. They (most people) want to believe they elected legal and ethical individuals who will

abide by the laws they, themselves, have said the citizens have the right to expect of them. Nor would these same ordinary prudent taxpayers and voters approve of any judicial officers trying to hide such report (by any such doctor given) and be expected to take the word of said judicial officers who MIGHT SAY the public could not see said report.
Especially since same cannot possibly meet the requirements of Code 27 (West Virginia). It has already been documented herein that Respondents do not wish to accept a competent psychiatrist's statements, which meets Rule 35 requirements, so one has to have some kind of problem to allow such "going outside the limits of the law" when the laws do not so allow, nor is "mode of proper procedure", per Rule 35. Please take judicial notice.

CONCLUSION

3. Briefly: Petitioner seeks that the mandatory laws provide what those laws cited provide, by which all shall be bound. It is the Respondents that do not want to comply with the mandatory laws (Constitutions and Supreme Court Decisions) written in pursuance therewith, including the West Virginia State Supreme Court of Appeals, heretofore. Additionally, Respondents want to write (order) their own laws, not allowed by any statute, thereby hoping to cover up and circumvent those laws applicable to all, especially those that are jurisdictional required laws. They (some) go on abusing powers they do not have.

For these reasons Petitioner prays for a constitutional-acting compliance court to preside herein. This is her right. Until such time Petitioner can have her guaranteed civil rights protected and complied with by such court, all 0unconstitutional documents labeled Orders will be ignored

by her, as per the laws applicable and already used by constitutional courts, which is a part of due process. Please take judicial notice.

S/ Marie M. McMahon
Marie M. McMahon, pro se
103 Pratt Street
Berkeley Springs, WV 25411
(304) 258-1117

*Please take notice that the records reflect that one of Petitioner's attorneys allowed J. Snead to sanction Petitioner (Aschmann's clients) for Six Hundred Sixty-Six Dollars ($666.00) because Ashcmann did not and would not answer discovery on time. Snead did nothing to Aschmann, per him, it was the fault of his clients, not true. Petitioner begged, pleaded and furnished all answers/questions, etc. Aschmann/Snead were working for F & M and Aschmann, not Aschmann's supposed Clients (Petitioner). David Savasten did nothing about such except to take the money from Petitioner. Further, he furnished an affidavit because he knew those items sworn to are a matter of record; however, affidavit appreciated, she will take every correct action she is offered.

CERTIFICATE OF SERVICE

I, Marie M. McMahon, Petitioner in the foregoing matter (Sup. Ct. Case No. 970536) hereby CERTIFY that I have served a true copy of the foregoing upon each individual respondent by U. S. Mail, First Class Postage Prepaid, at their respective addresses of record, this 27th day of March, 1997, plus all files, as well.

S/ Marie M. McMahon

Marie M. McMahon, pro se
103 Pratt Street
Berkeley Springs, WV 25411
(304) 258-1117

95-C-37

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 20th day of March, 1997, the following order was made and entered:

State of West Virginia ex rel. Marie M. McMahon, Petitioner
vs.) No. 970536
Honorable Margaret L. Workman, Chief Justice, Supreme Court of Appeals; Honorable John M. Hamilton, Senior Status Judge; and Martin & Seibert, and Paul Weiss, Respondents

On a former day, to-wit, March 13, 1997, came the petitioner, Marie M. McMahon, pro se, and presented to the Court her petition praying for a writ of prohibition and/or mandamus to be directed against the respondents, the Honorable Margaret L. Workman, Chief Justice, Supreme Court of Appeals; the Honorable John M. Hamilton, Senior Status Judge; and Martin & Seibert, and Paul Weiss, as therein set forth. Upon consideration whereof, the Court is of opinion that a rule should not be awarded and the writ prayed for by the petitioner is hereby refused. Chief Justice Workman refused to disqualify herself and participated in the consideration and decision of this matter.

A True Copy Attest: S/ *Connie A. Bowling*
Interim Clerk,
Supreme Court of Appeals
Rec'd in Mail 3-29-97/MM

[Reproduction of Envelope]

$0.32 US Postage
postmarked Charleston,
WV March 28, 1997

Supreme Court of Appeals
State of West Virginia
Office of the Clerk
Building 1, Room E-317
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0831

Marie M. McMahon
103 Pratt Street
Berkeley Springs, WV 25411

Rec'd March 20, 1997 Order
3/29/97 MM

R.Shapiro, M.D.
235 S. Water St.
Eastridge Health Systems
Martinsburg, WV 25401

Ms. Betty R. Moss
202 Fairfax Street, Suite 101
Clerk of Circuit Court of Morgan County
Berkeley Springs, WV 25411

Recorded & Filed in the Office of
the Clerk of the Circuit Court of
Morgan County, WV on 4-1-97
Time 1:34 P.M.
S/ *Phyllis M. Hansroth*
Deputy Clerk

Stamp:

A TRUE COPY, ATTEST:
S/ *Betty R. Moss*
Clerk of the Circuit Court of
Morgan County, West Virginia
By Phyllis M. Hansroth, Deputy

CONFIDENTIAL

MARIE M. McMAHON, PARA-LEGAL
103 Pratt Street
Berkeley Springs, West Virginia 25411
(304) 258-1117

Case # 95-C-37

April 14, 1997

Eastridge Health Systems, Inc.
235 South Water Street
Martinsburg, WV 25401

Re: Client records (my own) in accordance with state law...
Attn: Dr. Raymond Shapiro

Dear Dr. Shapiro:

You will notice I did not draw your attention to WV Code 27-3-2, in my letter to you April 11, 1997...just sent the law for you to read for yourself.

You'll note that the first paragraph does not allow you to disclose or transmit any information about a patient or client without the permission in writing by that patient/client; that each such person giving such authority must be given a copy of same. OPS, that mans who ever it was that got "nasty" with you on the phone, probably acting under "supposed" authority of Mr. Hamilton and/or Martin & Seibert attorneys, were, again violating this law, and trying (and obviously did) get you to comply with their wish, which violated 27-3-2 WV Code.

As to 27-3-1, neither Hamilton nor West Virginia Supreme Court of Appeals has a right to violate that law of "confidentiality" unless it meets other laws such as those mentioned specifically. 27-5-4 has to do with Institution of

final commitment, proceedings, hearing requirements. 27-5-2 is Institution of Proceedings for involuntary custody for examination, custody procedure cause hearing, examination of individual; 27-5-3 is Admission Order involuntary hospitalization for examination, hearing release; and 27-6A-1 is Determination of Competency of defendant to stand trial and of criminal responsibility; examination, commitment. Mr. Hamilton precluded all those in his first order to try to get Dr. Soule to examine me. So you can see, it certainly appears from the laws applicable, Mr. Hamilton has violated not only my fundamental civil rights to represent myself (so said WV Sup. Ct of another pro se person) but he has also listened to attorneys who have helped him violate these laws also; apparently "nastied" you into joining and filing something "confidential" on April 1, 1997, in Case 95-C-37, even before I tried to get you off the hook and saw you on April 8, 1997, an appointment I made with you...which you refused payment for...still trying to please a judge who does not follow laws as written and a clerk that apparently forgot her oath of office also. The real problem is all who do not support their oaths of office should not be a part of the judicial system...unless they do, we have no justice!

Sincerely,

S/ Marie M. McMahon

cc: all files

Stamp:
Received & Filed in the Office
of the Clerk of the Circuit
Court of Morgan County, WV
on 4-15-97. Time 12:45 P.M.
S/ Phyllis M. Hansroth
Deputy Clerk

MARIE M. McMAHON, PARA-LEGAL
103 Pratt Street
Berkeley Springs, West Virginia 25411
(304) 258-1117

Case # 95-C-37

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235 South Water Street
Martinsburg, WV 25401

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final commitment, proceedings, hearing requirements. 27-5-2 is Institution of Proceedings for involuntary custody for examination, custody procedure cause hearing, examination of individual; 27-5-3 is Admission Order involuntary hospitalization for examination, hearing release; and 27-6A-1 is Determination of Competency of defendant to stand trial and of criminal responsibility; examination, commitment. Mr. Hamilton precluded all those in his first order to try to get Dr. Soule to examine me. So you can see, it certainly appears from the laws applicable, Mr. Hamilton has violated not only my fundamental civil rights to represent myself (so said WV Sup. Ct of another pro se person) but he has also listened to attorneys who have helped him violate these laws also; apparently "nastied" you into joining and filing something "confidential" on April 1, 1997, in Case 95-C-37, even before I tried to get you off the hook and saw you on April 8, 1997, an appointment I made with you...which you refused payment for...still trying to please a judge who does not follow laws as written and a clerk that apparently forgot her oath of office also. The real problem is all who do not support their oaths of office should not be a part of the judicial system...unless they do, we have no justice!

Sincerely,

S/ Marie M. McMahon

cc: all files

Stamp:
Received & Filed in the Office
of the Clerk of the Circuit
Court of Morgan County, WV
on 4-15-97. Time 12:45 P.M.
S/ Phyllis M. Hansroth
Deputy Clerk

EAST RIDGE HEALTH SYSTEMS
235 S. Water Street - Martinsburg, WV 25401 - 304-263-8954

April 18, 1997

Marie McMahon, Para-Legal
103 Pratt Street
Berkeley Springs, WV 25411

Dear Ms. McMahon:

In response to your letter of April 14, 1997, it is my understanding that the results of the psychiatric evaluation is to be kept confidential with the Court. Judge Hamilton's letter of January 4, 1997 is enclosed. In it, it states specifically that the evaluation is "to be made available to others (including parties and their counsel) only on order of the Court_"

As you know, I have an enormous amount of respect for you. My hope is that things turn out well for you. You may wish to consider consulting with another psychiatrist, a psychiatrist who would in fact be able to discuss his findings with you.

Sincerely Yours,

S/Raymond M. Shapiro
Raymond M. Shapiro, M.D.

cc: The Honorable John M. Hamilton, Retired
Circuit Court of Morgan County

/tmj

Jefferson County Office: 114 W. Liberty Street-Charles Town, WV 25414 (304)725-7565
Morgan County Office: 404 S. Green Street-Berkeley Springs, WV 25411 (304)258-2889

January 4, 1997

Hon. Paul Weiss
Hon. Lucien G. Lewin
Ms. Marie McMahon

Re: McMahon-v-Adams, et al
Morgan County - 95-C-37

Dear Madam and Gentlemen:

I have received from the Clerk and from Attorney Weiss copies of the opinion of the Supreme Court entered by that Court on December 13, 1996; the letter of Attorney Weiss dated December 26, 1996, together with his proposed order appointing psychiatrist Shapiro to examine and evaluate Plaintiff; and the Notice of Action of Plaintiff that she intends to petition the Supreme Court of the United States for relief.

It is my impression that we can take no further action until the Clerk receives from the State Supreme Court its mandate and that same will not issue until at least thirty days after entry of its judgment. Upon receipt of the mandate I request that the Clerk notify the parties and at that time Attorney

Weiss prepare and submit the order. We need not wait for the U.S. Supreme Court matter inasmuch as I assume the State Supreme Court will advise us if its mandate is stayed for action of the U.S. Court. Until we hear such from the State Supreme Court we will proceed after the Clerk receives the mandate.

The order by Attorney Weiss should clarify that in addition to the information to be furnished Dr. Shapiro a copy of the Supreme Court Opinion should also be given him so he may know the limits fixed by that Court and have the benefit of the factual history and background of the matter expressed therein. Also it should be spelled out that the report by the Doctor should be furnished to the Court only and that this be done by forwarding the report to the Clerk of the Court who will make and send a copy thereof to me for review and the Clerk will seal and keep the original copy to be made available to others (including parties and their counsel) only on order of the Court; that no finding re Plaintiff's general competency is required - our concern, and the doctor's, is to determine whether Plaintiff is mentally competent to proceed in this action or is her mental condition such that a guardian ad litem should be appointed to protect her interests in the present action.

Copy of the opinion of the State Supreme Court is returned herewith to the Circuit Clerk for her use in furnishing same to the Doctor together with copy of this letter and the other information at the proper time.

Sincerely,

John M. Hamilton

cc: Hon. Betty R. Moss, Clerk